



THE LAW OF BANKING IN NIGERIA

**Principles, Statutes
and Guidelines**

Jacob Otu Enyia

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Dedication

This book is dedicated to my dear wife and a comforter Mrs. Christy Otu Enyia who has stood by me at all times and making life worth living

Acknowledgements

The Law of Banking in Nigeria - Principles, Statutes And Guidelines has indeed endured for years with me as indicated in the preface of my experience as a student and a law teacher. Let me first acknowledge the will of God who created in me the idea of writing a book on banking law and particularly for providing me the grace, good health, resources and stable disposition to value to the academic world.

As there are many other banking Law text books by reputable authors, I may therefore acknowledge them for providing the faculty upon which my intellectual make up is anchored.

Right from 2013 when I joined the University of Calabar, I enjoyed the cooperation of the Faculty of Law and the University in general. The combination of the impeccable administrative leadership of Profs. Epoke and Zana Akpagu and the exceptional scholarship and competence of the several Deans of the Faculty of Law to wit: Prof. Kingsley Igweike of blessed memory, Prof. K.S.A. Ibeku, Prof. C. Y. Ndifon, Prof. J. A. Dada, Associate Prof. Rose O. Ugbe and Prof. M. P. Okom enhanced my traverse in this academic horizon that have metamorphosed into this academic tool for the enhancement of further academic knowledge.

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May the Almighty God bless you abundantly.

Preface

The Law of Banking in Nigeria: Principles, Statutes and Guidelines is a vindication of my academic sojourn in the area of banking and finance in 1983 and legal studies in 1993 respectively at the University of Calabar. It is also the outcome of my teaching and research in this area at both the undergraduate and post graduate level serve my graduation in 1987.

As banking business occupies the centre position of economic activities in Nigeria, the book is intended to expose and give a practical outline of the Nigerian banking law. Its primary purpose is to meet the needs of many students who are studying for law degree in the various law faculties in the Nigerian universities and post graduate students who are carrying out research in Banking Law and Practice.

Candidates studying for professional courses in banking, finance, accounting and business administration will also find the book very useful.

Though the book is primarily designed for students, however, Judges and presiding officers of courts, law teachers, legal practitioners, law administrators, bank officials and customer as well as curious readers interested in the knowledge of the Nigerian banking law will also find the book very useful and handy. Besides these, it will be a valuable guide to business executives, managers and investors within the Nigerian business environment. Noticeable features of this book which to a large extent distinguish it from other text-book on banking law is the elaborate treatment of the subject matter of electronic and Islamic banking and the relevant statutory enactment and guidelines that regulate the operation of banking business in Nigeria.

It is hoped that the topic treated in the various chapters will stimulate the reader's interest and understanding and knowledge in the various areas articulated.

Dr. Jacob Otu Enyia
2018, Calabar

List of Abbreviations

A/C	Account
AC	Appeal Cases
AC	Appeal Cases
AFWLR	All Federation Weekly Law Report
All ER	All English Report
All NLR	All Nigeria Law Report
ALRC	African Law Report Commercial
Ante	Below
ATMs	Automated Teller Machines
BFLR	Banking and Financial Law Report
BVN	Bank Verification Number
C.C.H.C.J.	Certified Copies of High Court Judgments, Lagos State
CAMA	Companies and Allied Matters Act
Cap.	Chapter
CBN	Central Bank of Nigeria
Ch. App	Chancery Appeals
Ch.	Chancery
Ch.D.	Chancery Division
CJ	Chief Judge
Comm. Cas.	Commercial Cases
E.R.	English Report
EFT	Electronic Fund Transfer
FCT	Federal Capital Territory
FOREX	Foreign Exchange
FSC	Federal Supreme Court
FWLR	Federation Weekly Law Report
HL	House of Lords
I.O.U	I Owe You
Ibid	In the Same Place
ICLRQ	International Comparative Law Review Quarterly
ICT	Information and Communication Technology

INEC	Independent National Electoral Commission
J.	Judge
JCA	Justice of the Court of Appeal
JER	Judgment Enforcement Rule
JSC	Justice of the Supreme Court
KB	Kings Bench
KBD	King Bench Division
L. J. Exq.	Lord Justice
L.C.	Lord Chancellor
L.L.R	High Court of Lagos Law Reports
L.T.	Law Times
LJ	Lord Justice
Lloyds Rep.	Lloyds Law Report
LP	Legal Practitioners
LPA	Legal Practitioners Act
LR	Law Reports
LUA	Land Use Act
M.R.	Masters of the Roll
MIRC	Magnetic Ink Recognition Character
MJSC	Monthly Judgments of the Supreme Court
NBLR	Nigeria Banking Law Report
NCLR	Nigerian Commercial Law Report
NIBSS	Nigeria Inter-Bank Settlement System
NLC	Nigeria Labour Congress
NLR	Nigerian Law Report
NMLR	Nigeria Monthly Law Report
NNLR	Northern Nigerian Law Report
NSCC	Nigerian Supreme Court Cases
NWLR	Nigerian Weekly Law Report
Op. Cit.	Cited from the same author
OYSHC	Oyo State High Court Law Report
P.pp.	Pages(s)
PC	Personal Computer
PIN	Personal Identification Number
PLS	Profit and Loss Sharing

POS	Point of Sale
Pt.	Part
QB	Queens Bench
QBD	Queens Bench Division
CA.	Judgments of the Courts of Appeal of Nigeria
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgments
SCNLR	Supreme Court of Nigeria Law Report
SMS	Short Message Service
TLR	Times Law Report
Vol.	Volume
WAN	Wide Area Network
WLR	Weekly Law Report

Table of Cases

- A. T. (Nig.) Ltd. v. U.B.N Plc. [2010] 1 NWLR (Pt. 1175) 360 at 386; 171
- A.L. Underwood v. Barclays Bank Limited [1924]; 184
- Abdullahi v. Waje Community bank [2000] 7 NWLR (Pt. 663) 9, [2000] 2 NBLR 200; 168
- Abimbola v. Bank of America [1977] 4 CCHCJ 547; 261
- Aburkhan v. Attar Singh [1965] ALR Comm. 436; 282
- ACB v. Att.-General of Northern Nigeria [1967] 1 All NLR 76; 278
- ACB Ltd. v. Babafemi Ogunlade [1969] NCLR 363; 144
- ACB Ltd. v. Balogun [1969] NCLR 176; 144
- ACB Ltd. v. Mohammed Khalil and Abdel Suleiman [1971] 1 NCLR 71; 136
- ACB v. Yesufu [1979] 2 S.C. 93; 246
- Adejumon v. Co-operative Bank Ltd. [1992] 3 NWLR Pt. 228 p.25; 84
- Ademiluyi v. African Continental Bank [1964] NCLR 10; 59, 87, 88
- Adesanya v. Leigh Hoesh (1968) N.C.L.R.430; 196
- Adetoro v. U.B.N. Plc. [2008] 13 NWLR (Pt. 1104) 255 at 296; 168
- Aeroflot (Soviet Airlines) v. United Bank of Africa [1963] 3 NWLR 188; 84, 294
- African Continental Bank v. Eagle Pack (Nig.) Ltd. [1995] 2 NWLR (Pt. 379 590 at pages 614-615; 148
- AG Federation v. Ekpa [1976] 2 FNLR 206; 503
- AG Northern Nigeria v. ACB Ltd. [1964] 1 ALR 232; 142
- Agbonmagbe Bank Ltd. v. C.F.A.O. Ltd. [1966] 1 A.L.R Comm. 238; 247
- AGF v. AG of the 36 States [2002] 5 MYSC Pp. 129-130 Paras G-A; 321
- Airoe Construction and Civil Engineering Ltd. v. University of Benin [1985] 1 NWLR (Pt. 2) 287; 169
- Akinsanya v. UBA [1986] 4 NWLR (Pt. 35) 273; 151
- Akorokeri (Atlantic) Mine Ltd. v. Economic Bank Ltd. [1904] 2 KB 465; 260, 261
- Akwule & Ors. v. Regina [1963] 1 All NLR 193; 54, 55, 264, 298

Alfotrin Ltd. (The Owners of M v. Fotini) v. The Attorney General of the Federation and Anor. [1996] a NWLR (Pt. 457) 634 @ 638; [1996] 12 SCNJ 236; 167

Alhaji M. U. and Sons Ltd. v. L.B.N Plc. [2006] 2 NWLR (Pt. 964) 288 and 297; 165

Aliba v. Standard Bank of Nigeria Ltd.; [1976] NNLR, at p.404; 268

Allied Bank v. Akubueze [1997] 6 SC NJ 166; 165

Amede v. U.B.A. [2008] 8 NWLR (Pt. 1090) 623 at 658; 171

Angyu v. Malami [1992] NWLR (Pt. 264) 242; 171

Anyaeobosi v. R.T. Briscoe Ltd. [1987] 3 NWLR (Pt. 713) 610 at 625; 110

Arab Bank (Nigeria) Ltd. v. Alhaji Aminu Dantata [1977] 7. S.C. 33-44

Arab bank Ltd v. Ross [1952] 2 Q.B.D. 216; 219

Arab Bank Ltd. v. Barclays Bank DCO (1954). AC 495; 98, 202

Archer v. Bank of England [1782] 99 E.R. 404; 232

Attenborough v. Mackenzie [1856] 125 L.J. Exq. 244 at p.245; 239

Attrib v. United Bank of Africa Ltd. [1967] NCLE 166; 278, 279

Attorney General of Bendel State v. United Bank for Africa Ltd. 1986] 4 NWLR 547 at 538; 151, 154

Augustine Chigozie UBA v. Union Bank of Nigeria (1995) 7 NWLR p.18 para A; 87, 153

Ayansina v. Co-operative Bank Ltd. [1994] 3 NWLR 742; 162, 163

Ayuba v. Ogunleye & Shangoranti (Egbado Trading Co.) Bank of America (1970) NCLR 21; 99,

Ayuba v. Ogunleye [1970] N.C.L.R. 21; 185

Backhouse v. Chalton [1878] 8 Ch.D. 444; 269

Baines v. National Provincial Bank Ltd. [1927] 32 Comm. Cas. 216, 273

Balmoral Super Market Ltd. v. Bank of New Zealand [1974] 2 NMLR 155; 81

Balogun v. National Bank of Nigeria Ltd. (1978) 3 SLI55 at pg. 163-164; 79, 84

Banbury v. Bank of Montreal [1918] A.C. 629; 50

Banco Pupulare di Navaro v. John Livanos [1965] 2 Lyds. Rep. 149; 221

Bank Melli Iran v. Barclays Bank [1951] 2 Lloyds Rep 367; 152

Bank of America v. Kujore [1978] 8 CCHCJ 1279 at 1282; 94

Bank of England v. Vagliano (1891) A.C. 107; 206, 274

Bank of the North v. Dabare [1974] NCLR 448; 183

Bank of the North v. Idirisu (2000) 3 NWLR (Pt. 649) 373; 162, 171

Bank of Scotland v. Dominion Bank (Toronto) [1891] A.C. 92; 246

Banque de l'Indochine v. J. H. Rayner (1983) 1 All E.R. 1137; 152
 Barclays Bank Ltd. v. Abubakar [1977] NSCC 415; 168
 Barclays Bank D.C.O. v. Hassan (1961) All NLR 836; 168, 169
 Barclays Bank D.C.O. Limited v. J.A. Baderinwa (debtor) re: Lagos Executive
 Development Board (Garnishee) (1962) 2 All NLR Vol.2, 1102; 181
 Barclays Bank v. Okenarhe (1966) 2 Lloyds Rep 81; 164
 Barclays Bank D.C.O v. Yesufu Alabi Adigun [1961] All NLR 536; 170
 Bavins Junior and Sims v. London South Western Bank [1900] 1 Q.B.D 327; 202
 BB Apugo & Sons Ltd. v. ACB Ltd. [1989] ICLRQ 87; 164
 BBC Brown Boveri (Nig.) Ltd. v. Wema Bank [1989] 1 CLRQ 184; 79
 BCCI v. D. Stephens Industries Ltd (1992) 3 NWLR pt. 232 p. 772; 86
 Bennette v. Brumfit (1867) L.R., C.P., 28; 203
 Bevan v. Nation Bank [1901] 23 TLR 65; 260
 BEWAC Ltd. v. Africa Continental Bank Ltd. [1973] NCLR 352; 279
 Bird & Co. Ltd. v. Thomas Cook & Sons Ltd. [1931] 211 E.R. 227; 214
 Bissel & Co. v. Fox Brother & Co. [1885-86] 53 LTR 193, at p.194; 271
 Bissel & Co. v. Fox Brothers & Co. [1884-85] 51 LT 663; 278
 Bower v. Foreign & Colonial Gas Co. and Ors [1874]; 184
 Bower v. Turner [1863] 32 L.J. Ch. 54; 168
 Bradford Old Bank v. Sutcliffe [1918] 2 K.B. 833; 263
 Brett L.J. in Suffel v. Bank of England [1833] 9 QBD 555
 Brewer v. Westminster Bank Ltd. [1952] 2 QB 650; 269
 British and France Bank v. Opaleye (1962) All NLR; 81, 85, 176
 Brown v. De Winston [1848] 136 ER 1281, at p. 1288; 285
 Buckingham & Co. v. London & Midland Bank Ltd. [1895] 12 TLR 70; 86, 94
 Capital and County Bank Ltd. v. Gordon [1903] AC. 240; 280
 Carew v. Duckwort [1868] LR 4 Exchq. 313; 267
 Carlos v. Fancourt [1794] 101 E.R. 272; 202
 Carpenter's Company v. Brit. Mutual Banking Co. [1938] 1 KB 511, at p.532; 274
 Carrata Marble Co. Ltd. v. Alhaji Ado Ibrahim, Lagos High Court, Suit No.
 ID119\71 (unreported); 282
 Caton v. Caton [1967] L.R., 2H.L. 143; 203
 Central Bank of Nigeria v. National Bank of Nigeria Ltd. [1976] NCLR 199; 279
 Chapman v. Cottrel [1865] 34 LJ Exq. 186; 284
 Charles v. Blackwell [1827] 130 E.R. 725; 250

Chartered Mercantile Bank of India, London & China v. Dickson [1871] LR SPC 574, at p.590; 289

Chief Edu v. National Bank of Nigeria & West Africa Travel Agency Limited [1971] 1 All N.L.R. 256; 297

Citizen Int'l Bank Ltd. v. SCOA (Nig.) Ltd. [2006] 18 NWLR (Pt. 1011) 332 and 336; 177

Clare & Co. v. Dresdner Bank [1914-15] All ER 617; 265

Clutton v. Attenborough [1897] 66 L.J. Q.B 221; 207

Commissioner of Taxation v. English Scottish and Australian Bank [1920] AC 682; 58, 78

Consolidated Company v. Curas & Sons [1892] 1 KB 495; 276

Council, F.U.T.A v. Ajidahun [2012] 14 NWLR (pt. 1321) 582 at 609; 170

Cromton Richmond Co. Inc. v. Atanda [1967] N.M.L.R 383, p.386; 194, 196

Daarnhouwer & Co. Ltd. v. Christian & Co. Ltd. and Anor. [1967] N.C.L.R. 434; Forster v. Driscoll [1929] 1 K.B. 478, 494; 205, 227, 255

Daniel Holding Ltd. v. U.B.A Plc. [2005] 13 NWLR (Pt. 943) 533 at 552; 170

Devaynes v. Noble [1816] 1 Mer. 529, 572 S.89; 52, 88

Diamond Bank Ltd. v. Plc. Ltd. [2009] 18 NWLR (Pt. 1172) 67 @ 9-97

Diamond v. Graham [1968] 1 W.L.R. 1061; 167, 216

Dracachi v. Anglo-Egyptian Navigation Co. [1868] LP 111 C.P. 190 at Pp. 191-192; 196

EC v. Musa (2003) Vol. 3. MJSC1; 332

Edwards v. Walter [1859] 7 C.B. (N.S.) 82; 252

Ekewunife v. Wayne (West Africa) Limited [1989] 5 NWLR (Pt. 122) 422 at 448; 169, 170

Ekpan and Anon v. Uyo [1986] 3 NLWR (Pt. 26) 63; 169

Enahoro v. Bank of West Africa Ltd. (1971) 1 N.C.L.R 180 (187); 163

Ex. Parte Swan [1868] L.R. Exq. 344; 243

Exon v. Russel [1816] 105 ER 921; 289

F.B.N Ltd. v. Moba Farm Ltd. [2005] 8 NWLR (Pt. 938) 492 at 519; 171

F.B.N Plc. v. Songonuga (2007) 3 NWLR (Pt. 1021) 230 at 279; 166

F.G.N v. Interstella Comms. Ltd. [2015] 9 NWLR (Pt. 1463) 1 at 33; 174

Faragol Instruments Ltd. v. National Bank of Nigeria (1993) 1 NWLR (Pt. 271) 586; 83, 161, 162, 170, 171

Fenn v. Harrison [1709] 100 E.R. 842; 223

Ferris v. Bond [1821] 106 E.R. 1085 - - - -
 Fidelity Bank Plc. v. Okwuowulu [2013] 6 NWLR (Pt. 1349) 197 at 221; 173, 175, 176
 Foley v. Hill (1848) 2 HLC 28; 51, 60, 61, 80
 Food Preserving and Canning Industry Ltd. v. Nasser (1962) L.L.R. 2.; 213
 Forster v. Mackinon [1869] L.R. 4 C.P. 704; 229, 251, 255
 Geary v. Physic (18_) 108 E.R. 87, p.88; 202
 George v. Surrey (1830) M. & M.; 203
 Gian Singh & Co. v. Banque de L'indochine (1974) 1 WLR 1234; 154
 Godwin v. Roberts [1902] 2 K.B.D 144; 194, 200
 Goodman v. J. Eban Ltd. (1954) 1 Q.B.D. 550; 204
 Great Western Railway Co. v. London and Country Banking Co. (1901) AC 414; 259
 Great Western Railway Co. v. London Country Banking Co. Ltd. (1901) AC 401; 57, 280
 Greenwood v. Martins Bank Ltd. [1932] 1 KB 371; 82, 85, 271
 Griffiths v. Dalton [1946] 2 K.B.D. 264; 210
 Guaranty Trust Bank Plc. of New York v. Hanney [1918] 2 K.B. 623; 159
 Guttbart v. Roberts, Lubbock & Co. [1909] 2 Ch.D. 226; 266
 H.N.D. Ltd. v. Gifts Unique (Nig.) Ltd. [2004] 15 NWLR (Pt. 896) 408 at 428; 170
 Habib (Nig.) Bank Ltd. v. Ochete [2001] 3 NWLR (Pt. 699) 114; 166
 Hale v. Victoria Plumbing Co. Ltd. (1966) 2 Q.B. 749; 176
 Hall v. Fuller (1826) 58 & Co. 750, 180 ER 279; 52
 U.B.N Plc. v. Ajabule [2011] NWLR (Pt. 1278) 152 at 186 - -
 Hamilton v. Spottiswoode [1849] 154 E.R. 1182, at p.1186; 201
 Hamzeh malas v. British Imex Industries [1958] 2 QB 127; 157, 158
 Happenstall v. Jackson, Barclays Bank Limited [1939] NCLR, 182; 183
 Harrods Limited v. Tester [1937] 2 All E.R. 236 - - -
 Hausa v. F.B.N Plc. [2000] FWLR (Pt. 29) 2561, [2000] 9 NWLR (Pt. 671) 4; 168
 Head v. Head [1893] 3 ch. 426; 81
 Himma Merchant Limit v. Alhaji Aliyu [1994] 5 NWLR (Pt. 34-7) 667, (1994) SCNJ 87; 169
 Hirschorn v. Evans [1938] 2. K.B 801; 3 All EP 491 ; 183
 Hitchcock v. Edwards and Anor [1889] 60 L.T. 636; 209
 Hogarth v. Latham & Co. [1878] 3 Q.B.D. 643 at p.64; 217

Hon. Justice Sotunye Dentun West v. Chief (Iche) Chucks Muoma, SAN (2008) 6 NWLR (Pt. 1083) 418 at 442; 174

Hong Kong-Shanghai Bank v. Lolee Shai [1928] A.C. 181; 255

Hooper v. Williams [1848] 154 E.R. 385 at 387; 283

Hornby v. McLaren (1908) 24 T.L.R. 494; 220

I.D.S Ltd. v. A.I.B Ltd. [2002] 4 NWLR (Pt. 758) 660; 168

Ilokson and Co. (Nig.) Ltd. v. U.B.N. Plc. [2009] 1 NWLR (Pt. 1122) 276 at 314; 167

Importers Company v. Westminster Bank Ltd. [1927] 2 K.B. 297; 261

Indochemist v. National Bank of Nigeria Ltd.; [1976] NCLR 143; 267

International Offshore Construction Ltd. v. S.C.N Ltd. [2003] 16 NWLR (Pt. 845) 157; 166

Intraco Ltd. Notis Shipping Corporation of Liberia, the Bhoja Trader [1981] 2 Lloyds Rep 256; 148

Ishola v. Societe Generale Bank (Nig.) Ltd. [1997] 2 NWLR (Pt. 488) 405; 170

Ismail v. Jivaras, [1965] ALR Comm. 436; 282

Issa v. Union Bank [1993] NML Pt. 288 p.502; 83, 87

Jarvis v. Wilkins [1841] 151 ER 825; 281

Joachimson v. Swiss Bank Corporation [1921] 3 KB 110; 60, 82, 86, 182, 263, 273

Joe Golday Co. Ltd. v. Co-operative Development Bank Plc. [2003] 2 SCNJ 1; (2003) S NWLR (Pt. 814) 58; 176

Jones v. Gordon [1877] 2 App Cas 616; 221, 272

Joselyne v. Roberts [1908] 2 KB 349, at p.351; 289

Kano Textile Printers Plc. v. Takur (1999) 3 NWLR (pt. 589) 78; 166

Kendall v. Hamilton [1879] App. Cas. 504; 287

Kirkwood v. Carol & Anor [1903] 1 K.B. 531; 282

Kirt v. Blurton [1841] 152 E.R. 120; 219

Koch v. Dicks [1932] All E.R. 476; 255

Kuch v. Mineral Oil Syndicate [1910] 54 S.J. 600CA; 183, 189

Kwei tek chao v. British Traders and Shippers Ltd. [1954] 2QB 459; 157

Ladbroke & Co. v. Todd [1914] Comm Cas 256; 58, 59

Ladipo v. Standard Bank of Nigeria Ltd. [1967] NCLR 469; 257, 262, 273

Leather v. Simpson [1871] LR 11 eq 398; 159

Leonarde v. Wilson (1834) 149 E.R. 895; 219

Little v. Slackford [1828] 173 E.R. 1120; 201

Lloyds Bank v. Brooks [1950] 7 2 J.I.B. 114; 84

Lloyds Bank v. Goke (1907) 1 K.B. 794; 218
 Lloyds Banks v. Hornby – Financial Times, July 5, 1983; 216
 Lloyds Bank Ltd. v. Swiss Bankerein [1913] 108 LT, at p. 146; 273
 London and River Plate Bank v. Bank of Liverpool [1896] 1 Q.B. 7, at p.10; 170,
 229
 London Joint Stock Bank v. Macmillian & Arthur [1918] AC 777; 60
 London, Chatham and Dover Railway Company v. South Eastern Railway
 Company [1893] A.C. 429; 167
 M. H. (Nig.) Ltd. v. Okefiena [2011] 6 NWLR (pt. 1244) S14 at 533; 166
 Mason v. Lack (1929) 45 T.L.R. 362; 203, 212
 Mason v. Schuppisser (1899) 81 LT. 147, at p.148; 194
 Metalimpex v. A.G. Leventis [1976] 1 All N.L.R 84; 215, 217, 227, 241, 247
 Meyer & Co. Ltd. v. Sze Hai Tong Banking & Insurance Ltd.; [1913] AC 847; 272
 Midland Bank Ltd. v. Seymour [1955] 2 Lloyd's Rep. 147; 91; 152, 228
 Morton v. Copeland [1885] 199 E.R. 861; 226
 Mourice v. Lee [1825] 88 ER 258, at p.259; 285
 N.A.O.C Ltd. v. Ogini [2011] 2 NWLR (Pt. 1230) 131 at 152-153; 174-176
 N.B.C.I v. Integrated Gas (Nig.) Ltd. [2005] 4 NWLR (Pt. 916) 617 at 650-651; 165
 Nasaralai Ent. Ltd. v. Arab Bank [1986] 17 NSCC Part 2 p. 1039; 85; 149
 Nasaralai v. Arab Bank [1986] 4 NWLR (Pt. 36) 409; 154
 Nathan v. Odgers Ltd. [1905] 93 L.T. 553; 202
 National Bank of Nigeria v. Edo Textile Mills [1983] 1 FNR 536; 158
 National Bank of Nigeria v. Fasoro [1977] 3 OYSHE (Pt. I) 21-
 National Bank Ltd. v. Silkie [1891] 1 QB 425; 260
 Neale v. Turton [1827] 130 E.R. 725, at p.726; 251
 Nigeria Advertising Service Limited v. United Bank of Africa Limited [1968] 1 ALR
 Comm. 6; 296
 Nigerian Breweries Ltd. v. Muslim Bank of West Africa Ltd. [1963] LLR 78 @ 80;
 320, 324
 Nigeria Hotels Ltd. v. Nzekwe (1990) 5 NWLR (Pt. 149) 187 at 197; 175
 Norskog & Co. v. National Bank [1922] 10 Lloyds L.R. 625; 151
 North South Ins. Corp'n. Ltd. v. National Provincial Bank Ltd. [1936] 1 K.B.D. 328;
 206
 Nube Commerical Farms Ltd. v. NAL Merchant Bank [2001] 16 NWLR (Pt. 704)
 510; 111

Nwandu v. Barclays Bank D.C.O [1962] 2 All N.L.R. 218; 87
 Nwokorie v. Nwaneri & Ors [1967] NCLR 227; 285
 O.A.U. Ile Ife v. Olanihun [1996] 8 NWLR (Pt. 464) 123 at 129; 176
 Ogolo v. IMB Ltd. [1995] 9 NWLR (Pt. 419) 324; 111
 Ogunlade v. F.M.B (Nig.) Ltd. [2007] 2 NWLR (Pt. 1017) 16 at 32; 169
 Ojikutu v. Agbonmagbe Bank Ltd. [1966] ANLR 553; 54
 Okoro v. Okoro [2010] 2 NWLR (Pt. 1177) 198 at 211; 166, 167
 Okoronkwo v. Standard Bank of Nigeria [1974] N.C.L.R. 313; 196
 Oliver v. Davis [1949] 2 K.B.D. 727; 216
 Onyechi v. National Bank of Nigeria [1977] NCLR 83; 84
 Oriental Financial Corpn. Overend Gurney & Co. [1871] 7 Ch. App. 142; 224
 Osawaye v. National Bank of Nigeria Ltd [1974] NCLR; 79
 Owoeye v. Wema Bank [2002] 9 NWLR (Pt. 717) 1; 164
 Oyewole v. Standard Bank of Africa [1968] All NLR 449; 314
 Patridge v. Bank of England (1846) 9 Q.B.D. 396; 199
 Plunkett v. Barclays Bank Limited (1936) All E.R. 653; 182
 Price v. Mitchel [1815] Camp. 2200; 289
 Prince v. Oriental Bank [1878] 3 App. Cas; 252
 Prosperity v. Lloyds Bank Ltd. (1923) 39 TLR 372; 86
 Purification Techniques (Nig.) Ltd. v. A-G Lagos State [2004] 9 NWLR (Pt. 879)
 665 at 678-679; 174
 R.C.C. Nig. v. R.P.C. Ltd [2005] 10 NWLR (Pt. 934) 615; 169
 Raphael v. Bank of England [1985] 139 E.R. 1030; 222, 272
 Re British Trade Corporation [1932] 147 LT 46; 289
 Re Imperial Land Company of Marseilles Ltd [1870] 23 LTR 515e; 285
 Re Tillman (1918) 24 T.L.R. 322; 205
 Rekstin v. Severo Sibirsko [1933], 1.K.B. 42; 183
 Reugnette v. Overmann [1814] 35 E.R. 391, at p.394; 211, 214
 Richardson v. Richardson and National Bank of India Ltd. [1927] All E.R. 92; 265
 Rickett v. B.W.A Ltd. [1960] 5 FSC 113, 118; (1960) SCNLR 227; 168, 171
 Rimalt v. Cartwright, S.63 (3) and see Prince v. Oriental Bank [1878] 3 App. Cas;
 252
 Rofibi v. Savage [1944] 17 NLR 77, at p.79; 282
 Rovers v. Whiteley [1892] A.C 188; 61 L.T. Q.B. S.12; 180
 Royal British Bank v. Turguard 25 L.J. Q.B. 317; 144

S.A.F.P & U. v. U.B.A Plc. [2010] 17 NWLR (Pt. 1221) 192 at 201; 169, 170
 Sampson v. Sea top Rly Company [1874] 10 L.R.Q.B 28; 176
 Saunderson & Ors. v. Piper & Ors. [1839] 132 E.R. 1163 at p.1165; 194
 Savannah Bank (Nig) Ltd. v. Ajilo [1988] 1 NWLR (Pt. 97) 305; 126
 Scholoy v. Ramsbottom [1810] 2 Camp. 485; 253
 Shropshire Union Railways and Canal Co. v. The Queen [1875] L.R., 7.H.L. 496;
 196
 Sibree v. Tripp [1846] 153 ER 745; 285
 Sims v. Bond (1833) 5B & Ad. 389; 52
 Slingsby v. District Bank Ltd. [1931] 2 KB 588; 273, 278
 Smith v. Boheme [1724] 3 E.R. 271; 204, 206
 Smith v. Nightingale [1818] 171 E.R. 677; 205
 Soaga v. Fasasi (P.239) [1976] 8CCHCJ 2209; 282
 Stafford v. Henry [1850], 112 ir. Eq. R400; 54
 Stevenson v. Brown [1901-2] 18 LTR 268; 289
 Subramania Iyear v. Muthuperumal Pillai [1955] ALR Trav. Co. 141; 282
 Suffel v. Bank of England [1822] 9 QBD 555; 254
 Sunderland v. Barclays Bank Ltd. (1938) 5, 163; C & S 10; 90
 Tapp v. Jones (1975) 10 L.R.Q.B. 591 at 593; 176
 Tarn v. Commercial Bank of Sydney [1884] 12 Q.B.D. 194; 95
 The Fine Arts Society, Ltd. v. The Union Bank of London Ltd. [1886] 17 Q.B.D.
 705; 197
 The King v. Lovitt & Ors. [1911-12] 28 TLR 41; 264
 Thor Ltd. v. FCMB Ltd. [2005] 14 NWLR (Pt. 4); 169
 Tournier v. National Provincial & Union Bank of England [1924] 1 KB 461; 61, 86,
 90, 94
 U.B.A Ltd. v. Machael O. Abimbola and Co. [1995] 9 (NWLR) (Pt. 419) 371;
 U.B.N. Plc. v. Ajabule (2011) 18 NWLR (Pt. 1278) 152 at 186; 166, 167
 U.B.N. Plc v. Ifeoluwa (Nig.) Ent. Ltd. [2007] NWLR (Pt. 1032) 71 at 83
 U.B.N. Plc v. Lawal [2008] 7 NWLR (Pt. 1087) 613 at 632; 168, 169
 U.B.N. Plc. v. Boney Marcus Industries Ltd. and Ors [2005] All FWLR (Pt. 278)
 1037 at 1046 – 7 SC; [2005] 13 NWLR (Pt. 943) 654; 173, 173, 190
 U.B.N. Plc v. Scopk (Nig.) Ltd. (1998) 12 NWLR (pt. 578) 439 at 475; 170
 UBA v. Savannah Bank Ltd. suit No. LD/873/73; 142
 Udechukwu v. Okuka [1956] 1 FSC 70 at 71; 169

Union Bank Ltd. v. Sax (Nig.) Ltd. [1994] 8 NWLR 150; 163, 166, 168
 Union Bank of Nigeria v. Adediran [1987] 1 NWLR (Pt. 47) 52; 85
 Union Bank of Nigeria v. Albert Ozigi (1994) 3 NWLR (Pt. 333) 385; 166
 Union Bank of Nigeria v. Okwara (1998) 1 NWLR (pt 523) 118; 149
 Union Bank of Nigeria v. S. Ozezuah [1997] 2 NWLR (Pt. 485) 28 at 40-41; 151
 Union Bank of Nigeria v. Sparkling Breweries Ltd. [1997] 5 NWLR (Pt. 505) 344;
 149
 Union Bank v. Okubama [2002] 14 NWLR (Pt. 688) 570; 163
 United Dominions Trust Limited v. Kirkwood [1996]] 2 QB 431; 54
 United Nigeria Insurance Co. v. Muslim Bank (WA) (1972) S. C. 69 (1968) NCLR
 177) 1 All NLR 314; 78, 324
 Unity Life and Five Insurance v. IBWA (2001) NWLR (Pt. 713) 610, 625; 111
 Vincent v. Harlock [1808] 170 E.R. 1015; 231
 Walters v. Neary [1904] 21 T.L.R. 146; 230
 Walton v. Mascall [1844] 13 M. & W. 458; 263
 Webb, Hale & Co. v. Alexander Water & Co. Ltd [1905] 93 L.T 339; 195, 199
 Wema Bank Plc. v. Auto Import and Anor [2012] a BFLR p.g. 489; 190
 Williams v. Germaine [1829] 108 E.R. 797; 239
 Williamson v. Rider [1963] 1 Q.B.D. 89; 205
 Wise v. Charton [1836] 6 LKB 80; 284
 Woodland v. Fear [1857] 25 LQB 202; 264
 Woods v. Martins Bank Ltd (1959) 1 QB 55; 39, 70, 71; 58, 59, 78, 142
 Woolatt v. Stanley [1928] 138 L.T. 620, 622; 255
 Yassin v. Barclays Bank DCO (1968) NMLR 380 at 385; 110, 111
 Yeoman Credit Ltd. v. Gregory [1963] 1 All E.R. 244, 253-4; 218
 Yesufu v. ACB [1976] 4 SC 1 at 12-13; 111
 Yevaynes v. Noble [1816] (Mer 529 et seq.); 80
 Yonge v. Tonybee [1910] 1.K.B. 215; 95
 Young v. Irote [1872] 4 Bing. 253; 82

Table of Statutes

Independence Constitution of 1960; 327	Banks and Other Financial Institutions Act 1991; 306, 397, 403
Nigerian Constitution of 1963; 327, 328	s.9(1); 408 s.9(2)(b); 320
Nigerian Constitution 1979	s.10(1); 409
Nigerian Constitution 1999; 75, 328	s.25; 318
s.315(1)(a); 327	s.30; 315
s.1(1); 321	s.32; 316
s.1(2); 321	s.36; 415
s.1(3); 321	s.38(3); 317
s.2(1); 323	s.39; 419
s.3(1); 323	s.44; 316
s.160; 75	s.44(1); 316
s.276; 178	s.44(6); 317
Administration of Estates Act 1925; 95	s.48; 317
Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions Regulations 2013; 634	s.60; 672, 667 s.61; 312 s.51(1); 312
Asset Management Corporation of Nigeria Act, 2010; 69, 403	BOFI (Amendment) Decree No. 33 of 1998; 33
s.1; 70	s.2(1); 56
s.1(1); 70	s.23; 33, 42, 47
s.5; 70	Banks and Other Financial Institutions Act Cap B3 LFN, 2004; 27, 66, 109, 128, 339-372
s.58; 70	s.1; 67
s.60; 70	s.2; 67
	s.5; 68

s.5(1); 68	s.1(1); 306
s.6; 69	s.4(4); 308
s.12; 69	s.6; 307, 317
s.13(1); 347	s.7; 309
s.16; 300	s.7(4); 309
s.17; 300	s.9(2); 309
s.18; 300	s.10; 310, 317
s.19; 69, 300	s.11; 310
s.20; 300	s.15; 306, 307, 312
s.20(5); 438	Bankers Book (Evidence) Act 1879; 89
s.21; 300, 350, 351	Banking Act 1958; 28, 323
s.22; 300	Banking Act of 1969; 47, 306, 320,
s.24; 110	323, 372
s.25; 354-356	s.4(1); 54
s.29; 354, 356	s.13(b); 135
s.30; 360	Banking Act of 1990; 53, 63
s.32; 360	s.43; 53
s.32(1); 360	Banking Amendment Act, No. 3 of
s.33; 361, 362	1970; 53, 372
s.34; 361	Banking (Amendment) Act 1972; 372
s.36; 362	Banking (Amendment) Act 1975; 372
s.51; 363, 368	Banking (Amendment) Act 1979; 372
s.52; 363	Banking Ordinance No. 15 of 1952; 28,
s.56; 369	55, 306
s.57; 368	Banking Ordinance 1958; 28, 55, 306
s.57(2); 627	Bankruptcy Act 1914; 97, 421
s.61; 27, 56	s.48(6); 97
Banks and Other Financial Institutions	Bills of Exchange Acts 1958; 227
Act 2005; 397	s.26(1); 227
Banks and Other Financial Institutions	Bills of Exchange Acts 1964; 281
Act 2007; 68	Bills of Exchange Act, 1990; 56, 200
s.3; 68	s.1; 56
s.4; 68	s.2(1); 199
Bank Employees, Etc. (Declaration of	s.3; 201
Assets) Act, 1986; 308	s.3(2); 204

s.5(2); 198	s.13(5); 394
s.10; 204	s.20(3); 382
s.11; 204	s.27; 390
s.49(1); 204	s.27(b); 391
Bills of Exchange Act, 1990; 259	s.28; 300, 390
Bills of Exchange Act Cap B8 LFN,	s.28(d); 388
2004; 55, 453	s.28(g); 389
s.75; 85	s.28(h); 388
s.77(2); 92	s.29; 390
s.82; 78, 92	s.29(1)(b); 388, 390
Capital Gains Tax Act; 70, 423	s.29(1)(c); 392
Central Bank (Currency Conversion)	s.29(1)(h); 388
Act of 1967; 46	s.30; 388, 390
Central Bank (Currency Conversion)	s.31; 65, 390
Decree, 1968;	s.32; 390
Central Bank Act 1958; 45, 46	s.34(d); 387, 391, 392
Central Bank of Nigeria (Amendment)	s.36; 390, 391
Act 1993; 397	s.38; 390
Central Bank of Nigeria (Amendment)	s.41; 65
Act 1997; 397	s.42; 65
Central Bank of Nigeria (Amendment)	s.45; 65
(No.2) Act 1998; 397	s.45(1)(a)(c); 390
Central Bank of Nigeria (Amendment)	s.47; 390
Act 1999; 397	Central Bank of Nigeria Act, 2010; 108,
Central Bank Decree, No. 24 of 1991;	414
46, 344-349, 397	Central Bank of Nigeria Code of
s.28; 368	Corporate Governance for Banks
s.39; 345	and Discount Houses in Nigeria,
Central Bank of Nigeria	2014; 655
(Establishment) Act, 2007; 54, 63,	Central Bank (Currency Conversion)
64, 373-402, 398	Decree No. 51 of 1968; 28
s.1; 64	Central Bank of Nigeria Guidelines of
s.2; 64	Electronic Banking in Nigeria,
s.2(d); 394, 627	2016; 639
s.4; 64	
s.6; 65, 394	

Central Bank of Nigeria Guidelines on International Money Transfer Services in Nigeria 2014; 627	s.456; 98 s.468; 98 s.478; 98
Central bank of Nigeria Prudential Guideline for Deposit Money Banks in Nigeria, 2010;	Companies Gain Tax Act; Companies Income Tax Act; 70, 396, 423
Centre for Information Technology Research and Training Bill, 2004; Electronic Messages, Information and Commercial Bill, 2004; 108	Computer Systems and Networks Security and Protection of Critical Information and Infrastructure Bill, 2005; 108
Cheques Act, 1964; 57 s.4; 57	Constitution of the Federal Republic of Nigeria, 1979;
Coins Ordinance, No. 6 of 1928; 55	Consumer Protection Council Act, 2004;
Community Bank Decree (CBD) No. 46 of 1992; 43	Consumer Protection Council Act, 2010; 108
Companies Act 1968; 199 s.2(1); 199 s.81; 227 s.85(1); 199 s.85(2); 199	Corrupt Practices and Other Related Offences Act, 2000; 509
Companies and Allied Matters Act Cap 59 Laws of the Federation of Nigeria, 1990; 295, 317, 344, 368, 396, 657, 660 s.70; 295, 296 s.73; 295, 296	Court of Appeal Act Cap C36 LFN, 2005; 176
Companies and Allied Matters Act Cap C20 LFN, 2004; 44, 74, 108, 329, 344, 363, 371 s.65-67; 227, 228 s.73; 227 s.189(1); 200 s.290; 433 s.401; 99 s.408; 362	Criminal Code Cap. 32; 228 s.465; 228
	Cyber Security and Information Protection Agency Bill, 2010; 108
	Decree No. 22 1973; 35, 38
	Decree No. 7 of 1977; 38
	Decree No. 28 of 1978; 38
	Decree No.15, 1988; 40
	Decree 22 of 1990; 42, 43
	Decree No. 3 of. 1991; 40
	Decree No. 15, 1991; 41, 44
	Digital Storage Centres, Electronic Communications Transactions Bill, 2006; 108

Direction 8 (h) (i-iv) of the High Court
 of Rivers State Practice Directions
 No. 2 of 2013; 178
 Dishonoured Cheques (Offences) Act,
 1977; 75, 313, 315
 s.1; 75
 s.1(1); 313
 s.2; 75
 s.3; 76, 314
 s.4; 314
 Dishonoured Cheques (Offences Act)
 Cap D11 LFN, 2004; 585
 Economic and Financial Crimes
 Commission (Establishment) Act,
 2004; 487, 675
 s.1(2)(c); 675
 s.12(2); 676
 s.43; 676
 Electronic Messages, Information and
 Commercial Bill, 2004
 Electronic Terminal Bill, 2011;
 Enterprise Promotion Decree No. 4 of
 1972; 28, 35
 Evidence Act, 2011; 54, 108, 110, 178
 s.2(58)(1); 54
 s.167(d); 178
 s.258(1); 56
 Exchange Control (Anti-Sabotage) Act
 Cap 114 LFN, 1990; 310
 Facilitating Electronic Transaction Bill,
 2011; 108
 Failed Banks (Recovery of Debts) and
 Financial Malpractices in Banks
 Act Cap F2 LFN, 2004; 427-451
 s.7(1); 431, 438
 s.8(2); 432
 s.9(2); 435
 s.11(1); 431, 432
 s.11(2); 439
 Fiscal Responsibility Act, 2007; 414
 s.47; 414
 Foreign Exchange (Monitoring and,
 Miscellaneous Prohibitions)
 1995; 676
 Foreign Exchange Market Act (now
 Foreign Exchange Act Cap. F34
 LFN, 2004; 310
 s.11; 310
 Foreign Exchange Act, 2010; 108
 Guidelines for Whistle-Blowing for
 Banks and other Financial
 Institutions in Nigeria, 2014; 669
 Information Technology Research and
 Training Bill, 2004 -
 Insolvency Act 1986; 96
 s.284; 96, 97
 Insurance Act, 1976; 133
 International Financial Organization
 Act (1960 No. 47); 587
 Interpretation Act, Cap 89 LFN, (1958);
 89
 s. 45(1); 89
 Interpretation Act Cap 1 LFN, 2004;
 Land Use Act 1978; 131
 s.3; 132
 Land Use Act Cap L/O LFN, 2004; 415
 s.21; 432
 s.22; 432
 s.26; 432

Lawful Interception of Information Transmitted Using Telecommunications Facilities Bill, 2011; 108	s.5; 72 s.7; 72 s.15; 73 s.37; 73
Legal Recognition of Electronic Messages in Commercial Transactions Bill, 2011; 108	s.38; 74 s.38; 74 s.40; 74
Local Loans (First Federal Government) of Nigeria Bonds 2003 (Amendment) Directions, 2004; 560	Nigeria Financial Intelligence Unit Regulation, 2015; 675 Nigerian Banking Act, 1990; Nigerian Export Credit Guarantee and Insurance Corporation. Decree 38 of 1991; 41
Local Loans (Registered Stock and Securities) Act 1946; 544	Order 8 rule 8 (2) of the Judgment Enforcement Rules (JER); 175
Local Loans (Registered Stock) Regulations, 2004; 555	Order 45 rule 2, Rules of the Supreme Court, 1983; 176
Mental Health Act 1983; 96	Penal Code Law (Cap. 89) Laws of Northern Nigeria (1963); 228
Money Laundering (Prohibition) Act, 2004; 532	Pension Reforms Act, 2004; 414
Money Laundering (Prohibition) Act, 2007;	Recovery of Public Property (Special Military Tribunals) Act Cap 389
Money Laundering (Prohibition) Act, 2011; 531, 676 s.23; 676, 677	Laws of Federation of Nigeria, 1990. (Now Cap R4 LFN, 2004); 310
National Information and Technology Development Agency Act, 2010; 108	Regulation of Telecommunication Facilities to Support Investigations Bill, 2012; 109
National Provident Fund Act; 368	Regulation of Transfer of Money by Electronic Terminal Bill, 2011; 109
Nigeria Deposit Insurance Corporation Act 1988; 368, 563	Sheriffs and Civil Process Act, Caps 6 LFN, 2004; 173, 177
Nigeria Deposit Insurance Corporation Act Chapter 301 Laws of the Federation of Nigeria 1990; 564	s.83; 191 s.83(1); 178, 190 s.83-92; 178
Nigeria Deposit Insurance Corporation Act, 2006; 71, 108, 415, 563 s.1; 71	

s.84(1); 180
s.85; 190
Stamp Duties Act; 70
Terrorist Prevention (Freezing of
International Terrorist Funds and
other Related Measures)
Regulation, 2013; 678
The Banking Amendment Act, 1990;
Trade Unions Act; 365
s.45; 365
Use of Information in Electronic Form
Bill, 2013; 109

UK

English Cheques Act 1957; 201
English Cheques Act 1957;
Bill of Exchange Act 1882; 53, 129,
206-211, 216, 217
s.2; 215, 216, 222, 225, 234, 270
s.3; 231
s.3(1); 229, 256
s.3(2); 234
s.5(2); 284
s.7; 214
s.9(10)(a); 205
s.9(10)(b); 205
s.10(2); 233
s.14; 240
s.17(1); 212, 234
s.17(2); 234
s.18(1); 234
s.18(2); 235, 245
s.19; 231, 235
s.20; 210

s.20(1); 218
s.20(2); 218
s.21; 225
s.21(3); 230
s.23; 226
s.24; 219, 228, 229, 270
s.25; 227, 269
s.26; 269
s.26(1); 226
s.26(2); 227
s.27; 216
s.27(2); 216
s.28(1); 223
s.28(2); 223
s.29; 218
s.29(1); 217, 219
s.29(2); 221, 222
s.30; 222
s.30(1); 217
s.30(2); 222
s.31; 217
s.31(4); 230
s.31(5); 232, 233
s.33; 231
s.34(1); 231
s.34(2); 232
s.35(1); 232
s.36(2); 232, 233
s.36(3); 220
s.37; 233, 239
s.38(1)(2)(3); 224
s.39(1); 236
s.40; 236
s.40(1)(2)(3); 224

s.41(1); 237	s.63; 253
s.41(2); 238	s.63(3); 252
s.43; 244	s.64(1); 254, 255
s.43(2); 238	s.65; 212
s.44; 244	s.65(1); 238
s.44(2); 235	s.65(2); 238
s.45; 225	s.67; 243
s.45(2); 241	s.68; 243
s.45(3); 245	s.73; 256, 268
s.46; 242	s.75(2); 94
s.47(1); 245	s.76; 250, 274
s.47(2); 245	s.77; 229
s.48; 225, 246	s.77(2); 277
s.50(1); 247	s.78(1); 258
s.51; 225, 248	s.78(2); 258
s.52; 248	s.79; 258, 260
s.54; 213	s.79(2); 272
s.54(b)(i); 228	s.80; 260
s.55(b)(ii); 228	s.81; 259
s.55(1); 248, 288	s.81(2); 275
s.55(2); 214, 215	s.82; 57, 229
s.57; 245	s.83; 205, 258
s.58; 240	s.85(1); 281
s.58(2); 222, 223	s.85(2); 283
s.58(3); 223	s.86(1); 284
s.59-69; 233, 272, 275, 276	s.88(1); 289
s.59(1); 249	s.88(3); 220
s.59(2); 250	s.89(1); 287, 289
s.60; 229, 250, 271, 274, 275	s.89(3); 289
s.61; 251	s.90; 286
s.62; 244	s.91(1); 281, 288, 290
s.62; 244	s.91(2); 288
s.62(1); 252	s.92; 220, 250, 272, 286
s.62(2); 252, 253	s.93(1); 226

s.93(2); 227

s.94(1); 241

Bills of Exchange Acts 1917 (cap. 21);
200, 248

s.82; 280

English Partnership Act 1890; 269

Table of Contents

Dedication

Acknowledgements

Preface

Foreword

List of Abbreviations

Table of Cases

Table of Statutes

Chapters

PART I - PRINCIPLES

Chapter 1: The Nigerian Banking System: Historical Development and Evolution

Introduction - 1

The African Banking Corporation - 1

 The Bank of British West Africa - 4

 The Bank of Nigeria - 6

History of the Merger - 8

 Efficacy of the Merger - 11

The Colonial Bank - 14

Emergence of Indigenous Banks - 15

Industrial and Commercial Bank - 16

The Nigeria Mercantile Bank - 18

The National Bank of Nigeria - 19

The African Continental Bank - 22

Other Indigenous Banks - 22

Mixed Bank - 23

Chapter 2: The Structure of the Nigerian Banking System

Commercial Banks - 27

Merchant Banks - 29
Development Banks - 31
Nigerian Industrial Development Bank (NIDB) - 33
Nigerian Bank for Commerce and Industry (NBCI) - 35
National Agricultural Bank Co-operation Bank (NACB) - 38
Federal Mortgage Bank of Nigeria (FMBN) - 39
Nigerian Export-Import Bank (NEXIM) - 40
Specialized Banking Institutions - 42
People's Bank of Nigeria (PBN) - 42
Community Banks (CMB) - 43
Urban Development Bank of Nigeria (UDBN) - 44
Central Bank of Nigeria - 45

Chapter 3: Development of Banking Business

Introduction - 49
Nature and Scope of Banking Business - 49
Who is a Banker? - 52
Statutory Definition of a Bank - 56
Judicial Definition of a Bank - 57
Who is a Bank Customer? - 57
The Nature of Banker and Customer Relationship - 60
Is Banking a Trade or a Profession? - 62

Chapter 4: Laws Regulating the Establishment and Operation of Banks in Nigeria

Introduction - 63
Banking Legislation and their Utilities - 64
Central Bank of Nigeria Act, 2007 - 64
Banks and Other Financial Institution Act (BOFIA) 2004 - 66
Banking Business - 67
Asset Management Corporation of Nigeria (AMCON) Act 2010 - 69
Nigeria Deposit Insurance Corporation Act (NDIC) 1997 - 71
Dishonoured Cheques (Offences) Act, 1977 - 75

Chapter 5: Banking Contracts

Introduction - 77

Formation of Banking Contract – 77, 79

The Customer - 77

Basis of the Banker-Customer Relationship - 79

Obligations of the Parties under the Contract - 81

Obligation of the Customer to the Bank - 82

Banker's Rights and Obligations - 83

Exceptions to the Rights and Obligations of Banker - 86

Protection of Bankers - 91

Termination of Banker and Customer Relationship and
Its Legal Consequences - 93

Chapter 6: Electronic Banking

Introduction - 101

What is E-Banking? - 103

Evolution of E-Banking - 104

Nature and Scope of E-Banking - 105

Legal Structure of E-Banking -108

Electronic Banking & Association Inhibitions - 109

Future of Electronic Banking - 113

Specific Issues on Internet Banking - 115

Risks Associated with Internet Banking - 118

Banking Verification Number and Salient Facts - 119

Chapter 7: Securities for Bank Lending: Perfection and Enforcement

Introduction - 125

Bank Lending & Securities - 125

Landed Property & Mortgage - 126

Specific Securities for Bank Lending

Features/ Virtues/ Qualities of Good Banking Securities - 131

Perfection of Banking Securities - 136

Chapter 8: The Nature and Legal Effects of Bank Accounts; Banks' Mandate

Introduction: Opening of Accounts - 141

The Mandates - 142

Essential Requirements of a Bank Mandate - 142

Types of Accounts - 143

Chapter 9: Bank Financing

Introduction - 147

Banker's Commercial Credits -147

Obligation of Issuing and Confirming Banks - 150

Deficiencies of Documents: Waiver and Indemnities - 154

Rejection of Documents on Extraneous Grounds - 157

Warranties by the Beneficiary - 157

Chapter 10: Loans, Overdraft & Interest: Legal Implication

Introduction - 161

What is a Loan? - 161

What is an Overdraft? - 162

Meaning of Interest - 166

Type of Account Holders - 172

Chapter 11: Banks & Garnishment

Meaning of Garnishee Proceedings - 173

What is the Nature of Garnishee Proceedings? - 173

Parties to Garnishee Proceedings - 174

Stages of Garnishee Proceedings - 174

Legal Implication for Banking Business - 177

Law Governing Garnishee Proceedings in Nigeria - 177

Rules of Attachment - 192

Chapter 12: Nature and Legal Effects of Negotiable Instruments

Introduction - 193

Negotiable Instrument as an Instrument - 194

Negotiable Instrument as a Contract - 194

Negotiable Instruments are Negotiable – 194

Quasi-Negotiable Instruments –	196
Negotiable Instruments -	198
The Governing Law -	200
Bill of exchange -	201
Essential Elements or Characteristics -	201
Types of Bills -	208
The Parties to a Bill –	210
Acceptance of Bills -	233
Payments of Bills -	239
Dishonour of Bills -	243
Discharge of Bills -	248
Cheques –	255
Payment of Cheques –	262
Protection of Banker –	269
Promissory Notes -	281

Chapter 13: Banking Malpractices

Introduction -	293
Malpractices by Bank Staff -	293
Malpractices by Non-Bank Staff -	298
Malpractices by Banks -	300
Impacts of Banking Malpractices on the National Economy -	304
Legal and Institutional Framework for Combating Banking Malpractices -	306

Chapter 14: Islamic Banking Principles & Constitutionality

Introduction -	319
Islamic Banking Operation in Nigeria -	319
Islamic Banking Operation in Nigeria in Post 1990 and Now -	324
The Nigeria Constitution in Focus -	326
Legislation of Islamic Banking and Financial Services under the Nigerian Constitution -	328
Jurisprudential Justification of the Content and 'Constitutionality' -	334

PART II SELECTED LEGISLATION

- Chapter 15:** Banks and Other Financial Institutions Act Cap B3 LFN, 2004 - 339
- Chapter 16:** Central Bank of Nigeria (Establishment) Act, 2007 - 373
- Chapter 17:** Asset Management Corporation of Nigeria Act, 2010 - 403
- Chapter 18:** Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act Cap F2 LFN, 2004 - 427
- Chapter 19:** Bills of Exchange Act Cap B8 LFN, 2004 - 453
- Chapter 20:** Economic and Financial Crimes Commission (Establishment) Act, 2004 - 487
- Chapter 21:** Corrupt Practices and Other Related Offences Act, 2000 - 509
- Chapter 22:** Money Laundering (Prohibition) Act, 2011 - 531
- Chapter 23:** Nigerian Deposit Insurance Corporation Act, 2006 - 563
- Chapter 24:** Dishonoured Cheques (Offences Act) Cap D11 LFN, 2004 - 585
- Chapter 25:** International Financial Organization Act (1960 No. 47) - 587

PART III: GUIDELINES

- Chapter 26:** Central Bank of Nigeria Prudential Guideline For Deposit Money Banks in Nigeria, 2010 - 593
- Chapter 27:** Central Bank of Nigeria Guidelines on International Money Transfer Services in Nigeria, 2014 - 627
- Chapter 28:** Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria, 2016 - 639
- Chapter 29:** Central Bank of Nigeria Code of Corporate Governance For Banks and Discount Houses in Nigeria, 2014- 655
- Chapter 30:** Guidelines for Whistle Blowing for Banks And Other Financial Institutions in Nigeria 2014 - 669
- Chapter 31:** Nigeria Financial Intelligence Unit Regulation, 2015 – 675

Index - 683

PART I

Principles

Chapter 1

The Nigerian Banking System: Historical Development and Evolution

One of the factors that made the establishment of banking in Nigeria necessary was the growth of trade.¹ Following the setting up of regular shipping between Liverpool in England, and the West African Coast, movement of Cargo and the increased importation of British silver coins in large boxes continued unabated. It was against this background that the initiative for the establishment of a bank was taken in the Lagos office of Elder Dempster & Co Ltd. Elder Dempster was the sole shipping firm, which ran the regular steamship voyage between Liverpool and the West African Coast.² The Lagos agent of Elder Dempster was Mr. George William Neville. Concern over the increasing number of silver boxes in his Lagos office led him to suggest the establishment of a bank in Lagos to the chairman of Elder Dempster, Mr. Alfred Lewis Jones. Neither of the two men had any sound knowledge of banking. When Neville thus suggested that banking facilities were urgently required in West Africa, and more so in Lagos, Alfred Jones told Neville “to Approach some existing bank and try to induce them to establish a branch in the colony.” Neville did.³

The African Banking Corporation

Neville approached the African Banking Corporation, which had just about then commenced business in South Africa in the same year, 1891. The London board of the African Banking Corporation accepted Neville’s proposal, and on June 4, 1891 “letters were read from Elder Dempster & Co, and from George Neville relating to the opening of a branch at Lagos.”⁴ Approval having been given for the founding of a branch of the bank in Lagos, Neville was asked to act as the bank’s agent in Lagos. Alfred Jones was in the meanwhile, coordinating the important issue of Colonial Office as well as Crown Agents’ approval. These approvals

¹ I. J. GoldFace- Irokalibe, *Law of Banking in Nigeria*, Lagos: Malthouse Press Ltd., 2007, P.3

² Ibid.

³ Ibid.

⁴ Extracts from records of the African Corporation Board meeting held on June 4, 1891, quoted by Fry, R., *Bankers in West Africa* London: Hutchinson Benham 1976, page 19.; Also see I. J. Goldface-Irokakbe, *Law of Banking in Nigeria*, Lagos: Malthouse Press Ltd. 2007. P.3.

became rather imperative as the first task of the Lagos branch was to import and distribute new silver coins. The bank sought and obtained a monopoly of this function hitherto undertaken severally by independent traders, though at a higher cost.

The second fundamental condition for the successful take-off of the Lagos bank was that it should become the banker to the colonial government. Hence, Permission on the application of silver import monopoly was granted on January 28, 1892, when the Crown Agents finally initiated an agreement. By this agreement, the African Banking Corporation became authorized to import new silver coins from the Royal Mint in Lagos, free of charges for packing, freight, and insurance.

Other independent traders in West Africa were still allowed to order new coins from the Mint with the Crown Agents' approval but only upon payment of a one per cent premium. The Bank itself was permitted to make maximum charge of 1% on new silver coins paid out. The issue of being appointed banker to the government took several sessions of serious negotiations to resolve. In May, 1892, a government account was opened. Meanwhile, a letter of instructions by the Board of the African Banking Corporation was approved for Mr. Neville on August 13, 1891.

It appears that the actual take-off of the Lagos branch took place soon afterwards, when Neville returned to Lagos. Banking was thus born in Nigeria.

From the viewpoint of a legal scholar, it is of very striking significance that there was no legislative organ either in England or the colony of Lagos to give effect to the establishment and regulation of banking business in Nigeria. What happened at this point was, at best, a mere administrative approval given by both the Colonial Office and the Crown Agents to the African Banking Corporation to commence business. It may well be that the authorities in charge of colonial matters saw the inception of banking in the Lagos colony as nothing other than a mere business venture at that time. It was therefore, not until about sixty years later, in 1952, that the first legislation on banking in Nigeria was passed.

After the founding of the Lagos branch of its bank in August, 1891, the African Banking Corporation decided on October 8, 1891 to send an inspector of the bank, Mr. McKenzie, to Lagos with a mandate "to see that the machinery of the branch is in proper working order, and if possible to visit other posts and send full reports to the director on the banking possibilities of the West Coast." The bank was to grapple with immense problems not the least of which was the refusal of the Crown Agents (with Colonial Office backing), to honour the request of its Lagos branch manager sent through the London office of the bank for shipment to Lagos of £50,000 worth of florins. Friction between the bank and colonial

authorities was eased on the intervention of Mr. Alfred Jones, chairman of Elder Dempster, then a senior official at the Colonial Office, saying that the Lagos manager was in dire need of silver florins. He affirmed that they were willing to ship the money but for Colonial Office restriction on the Mint. In his letter, Jones wrote:

I am sure you will help me in every way you can to get matters put on a proper footing as regards this bank. We have put our names to it and we must not allow it to be weak in any point. A good sound bank in Lagos, and other colonies in Africa, is an absolute necessity for the development of the country. Don't let us fail now in any little point...I shall be glad to hear that the government has given our Bank in Lagos their account.⁵

Following this, on December 10, the Crown Agents finally gave permission to the bank to ship silver "without restraint". While the bank was trying to consolidate itself in Lagos, a trade depression ensued in the area sequel to the outbreak of unrest between the Egba and the Ijebu, two rival Yoruba clans. On September 8, 1892, barely a little over one year of banking, Elder Dempster wrote advising that the bank's funds in Lagos might be transferred to London for better use. In the face of this and other difficulties, including complaints about the bank by some prominent Lagos traders to the Colonial Office, the chairman of the African Banking Corporation wrote to Mr. Alfred Jones. He expressed dissatisfaction with the progress of the bank in Lagos, and wanted to know if Elder Dempster would be prepared to take it over. This almost marked the collapse of banking in Nigeria, but the bank's chairman had a private meeting with Mr. Jones about the Lagos branch's affairs. It was then decided that the African Banking Corporation should continue for another three months, and if it then wished to withdraw, Elder Dempster would take over the branch and refund the money lost by the African Banking Corporation.

In October, the bank's chief inspector, Mr. Herbert, was sent to Lagos to report. After investigating the affairs of the bank, on November 24, he cabled London advising a sale to Elder Dempster. In January 1893, Mr. Alfred Jones attended a board meeting of the African Banking Corporation to discuss terms. The result of this meeting was the sale to Elder Dempster of the Lagos branch of the African Banking Corporation bank for a sum of £1000. The final takeover of the branch was effected on March 31, 1893.⁶

⁵ Fry, R., *op. cit.*, No page indicated.

⁶ Fry, R., *op. cit.*, page 22

The Bank of British West Africa

The take-over of the Lagos bank by Elder Dempster was not without problems. The Crown Agents, for instance, refused the transfer of the right of importation of Mint silver free of charge from the African Banking Corporation to the new undertaking under Elder Dempster. Furthermore, the Crown Agents insisted on the proper constitution of a new bank and £10,000 worth of securities being deposited in replacement of those to be withdrawn by the African Banking Corporation. To add to its other difficulties, the Colonial Secretary instructed the Governor of Lagos to proceed with the closure of official government account with the bank and to withdraw all government funds by March 30, 1893.⁷

Undeterred by these developments, Elder Dempster, through Neville, called on the then Acting Governor of Lagos, Captain G.C. Denton, and prevailed on him to press ahead with the withdrawal of government funds, at the time as the bank was changing owners. This he argued was likely to cause a run. He further offered to deposit £5,000 sterling in specie as security for the account if it was allowed to continue. Captain G.C. Denton reported this offer to London, and Lord Ripon, the Colonial Secretary, gave approval for the funds to remain. The securities earlier demanded were handed over in May 1893, and the formation of the Bank of British West Africa was announced. On July 8, 1893, a further J5,000 was deposited by the bank in the Lagos Treasury vault.⁸ In this way, the Bank of British West Africa made its debut in Lagos. It was, however, not until the following year, 1894, that the bank was formally registered in London. All accounts on the founding of the Bank of British West Africa, agree on the point that George Williams Neville was its founder. The records show that the bank was taken over from the African Banking Corporation, and given its new name in 1893, and was formally incorporated in London in 1894. In fact, even the present day successors to the Bank of British West Africa, namely, First Bank of Nigeria, confirm the founding of the bank to have been in 1894. However, research reveals that on Friday, November 10, 1899, Neville appeared before the “Barbour Committee” on West African Currency matters. During the course of his evidence before the Committee, Neville was asked about the Bank of British West Africa and his straightaway acknowledged founding the Bank in Lagos, in 1892.⁹

It is something of a historical anachronism that the very man who founded the bank should put the year of founding as 1892, while all other records and accounts speak of 1893 as the year of the take-over, by Elder Dempster, of the

⁷ Ibid., page 23

⁸ Ibid., page 24

⁹ Minutes of evidence before the Barbour Committee Question No. 189 page 5 on Friday November 10, 1899 National Archives (SNP 6 NO. 30/1912)

African Banking Corporation, and 1894 as the year of eventual incorporation of the Bank of British West Africa under its new name. The Likely explanation may be that when the African Banking Corporation's chief inspector, Mr. Herbert, visiting Lagos in late 1892 to investigate the affairs of the bank, some kind of take-over arrangement was discussed between him and Neville, resulting in his cable advising that the Lagos branch be sold to Elder Dempster.

Neville who chose the new name for the bank might have done so in late 1892, and accordingly, informed Elder Dempster chairman, Alfred Jones. The records show that in January, 1893, Jones attended a board meeting of the African Banking Corporation to discuss take-over terms. The final take-over being effected on March 31, 1893.¹⁰

The Bank of British West Africa took off in Lagos in 1893, and was formally incorporated in Lagos in 1894. Notwithstanding this legal oddity, the Bank of British West Africa which, technically, was no more than an offshoot of Elder Dempster & Co., enjoying its facilities, including being managed by Neville, its agent, had come to stay. This fact, however, highlights the legal lacuna in banking law in Nigeria. The Bank of British West Africa, already in existence and doing business that there was no law in Lagos (Nigeria) under which a bank was required to register before commencing business.

The Bank of British West Africa was registered in London as a limited liability company on March 31, 1894. The nominal capital was £100,000 in shares of £10 each. The bank's head office was in Liverpool Agent of David Sassoon and Company, East India Merchants and Bankers, and Edward Lawrence, head of his own Liverpool Merchant firm. Of the 3,000 shares issued in the first place, Alfred Jones took up 1,733. His partners in Elder Dempster, Alexander Sinclair and W.J. Davy, took 433 each. The rest went to the other directors.¹¹

The directors entered into talks with both the Crown Agents and Elder Dempster & Co., which resulted in the drafting of the Articles of Association and the formal taking of the Lagos banking business from Elder Dempster & Co. Ltd. It was at the first board meeting at London on May 4, 1894, that William (Sandy) Ross was appointed Secretary. On June 1, 1894, Alfred Jones was elected Chairman.

Once the Bank of British Africa was firmly entrenched in its new independent form, relations with the Crown Agents and the Colonial Office settled down amicably, notwithstanding intermittent disagreements. At the first Annual Meeting of Shareholders; Mr. Jones painted a very bright picture of the bank's fortune. According to the Chairman:

¹⁰ Fry, R., *op. cit.*, page 22

¹¹ *Ibid.*, page 26

The bank has as much business as it cares to do at present, and the Directors do not intend to expand rapidly, although there is, in their opinion, an unlimited demand on the Coast for money with good security I am quite convinced that there is a very great future for the bank.¹²

The second annual report showed that a year later, the paid-up capital of J12,000 now had a reserve fund of £2,000 added to it. Additionally, money held on current or deposit accounts had risen to £108,262. A dividend of eight per cent was paid, and this rate was repeated for many years afterwards. The Bank of British West Africa continued to grow and soon became a dominant feature of economic life not only in Lagos but elsewhere, where branches opened.

Two new branches were opened outside Lagos in quick succession. One in Accra, Gold Coast,¹³ in 1896, and another in Freetown, Sierra Leone, in 1898 in 1900, a branch was opened in Old Calabar¹⁴ to consolidate the various colonial banking activities. The use of cheques spread rapidly, and was soon almost the standard mode of paying customs duties and other revenue and for regular remittance of government funds. Most of the prominent traders in Lagos and elsewhere patronized the bank. By the close of the century, the bank was well established throughout British West Africa, and its home based in Lagos was strong and stable. Banking had finally arrived in Nigeria with rapid growth rate and high chance of success.

The Bank of Nigeria

Following the Bank of British West Africa, the next bank to be established in Nigeria was the Bank of Nigeria. The bank owed its inception to a number of leading Nigerian merchants who did not quite like the monopolistic power of the Bank of British West Africa over silver import and distribution. There were also allegations of discriminatory premium charged on the supply of silver coins to merchants in favour of some traders. The new bank was clearly therefore setup to compete with the Bank of British West Africa.

The Bank of Nigeria was established in 1899 under the title of the “Anglo-African Bank Limited” for the purpose of meeting the demand for banking facilities in Northern and Southern Nigeria which had been rendered more urgent by the introduction of silver currency. The name of the bank was subsequently changed to the “Bank of Nigeria Limited”. The capital of the bank was £150,000 in

¹² Ibid, page 27

¹³ Gold Coast is the erstwhile name of present day Ghana

¹⁴ Ibid., of footnote 12 at page 5

£1 shares and of this amount £32,000 was subscribed and issued.¹⁵ The first branches of the bank were located in Calabar, Burutu, and Lokoja. They were followed by one in Jebba on the Niger, and another in Grand Bassam in the French Ivory Coast (now Cote d'Ivoire).

The Bank of Nigeria, thus, became in a rather technical sense, the first bank in Nigeria given the fact that Lagos, where the rival Bank of British West Africa was situated, was then a colony, distinct from the Southern Nigeria protectorate. On this score alone, the claim by the Bank of British West Africa and its present day successors of being the first bank in Nigeria is incorrect. However, this claim becomes valid to the extent that the Bank of Nigeria later lost its independent identity, following its take-over by the Bank of British West Africa in 1912. In fact, as far back as 1904, in a letter dated February 5, and addressed to the Under-Secretary of State for the Colonies, Mr. Lich H. Moseley, Secretary of the Bank of Nigeria categorically described his bank (then known as the Anglo-African Bank), as "the only bank established in Nigeria."¹⁶

The Bank of British West Africa on the other hand, was as at February 1906, (two years after the Bank of Nigeria had described itself as Nigeria's only bank), still making enquiries from the Colonial Under-Secretary of State for the Colonies, as to whether it would be welcomed in Nigeria. This is to say, the territory of the protectorates outside Lagos. In a letter dated February 10, 1906, *Mr. J. Couper*, the Manager of the Bank of British West Africa in Liverpool informed the Under-Secretary of State for the Colonies, which his board has "under consideration the question of extending the sphere of the Bank's operations into Nigeria." He concluded in the following manner: "Before going any further my Board would be glad of an expression of opinion as to whether the advent of this Bank into Nigeria would receive support from the Government."¹⁷ It can be seen from the foregoing current, that in a narrow technical sense, the Bank of Nigeria was the first bank in Nigeria, two changes occurred to alter the legal position.

First, the Bank of Nigeria merged into the Bank of British West Africa after it was taken over by it in 1912. Secondly, it erstwhile Colony of Lagos merged with the rest of Southern Nigeria to form the Southern Nigeria Protectorate. The Southern Nigeria Protectorate in turn was amalgamated with the Northern Nigeria Protectorate to form the unified colony of Nigeria. At amalgamation in 1914, the Bank of British West Africa was thus the only bank in Nigeria. In these

¹⁵ These facts are contained in a letter dated February 5, 1904, written by the Secretary of the Bank of Nigeria Mr. Lich H. Moseley, to the Under Secretary of State for the Colonies in London. National Archives. (SNP6 49/1906).

¹⁶ Ibid.

¹⁷ Ibid.

circumstances, therefore, the claim of the Bank of British West Africa, and its successors in title (Bank of West Africa, Standard Bank of Nigeria, and First Bank of Nigeria) as indeed the first bank to open business in Nigeria, is to be accepted as correct.

So far, we have traced the evolution of banking in the modern sense of the inception of banks or banking from 1891, when the African Banking Corporation first arrived in Lagos, down to the 1914 amalgamation of the Southern and Northern protectorate of Nigeria into the united colony of Nigeria. This does not however, represent the entire spectrum of colonial banking enterprise in Nigeria. Before reference is therefore, made to other banks that subsequently emerged to compete with the Bank of British West Africa (then the only bank in Nigeria), a brief account of how the merger between the Bank of British West Africa and the Bank of Nigeria took place may be given.

History of the Merger

Resentment at the way and manner the Bank of British West Africa conducted its affairs, led to the formation of the Bank of Nigeria as a rival institution. It is not therefore surprising that the relationship between both banks was anything but cordial. Right from its inception, the Bank of Nigeria sought to end the silver import monopoly of the Bank of British West Africa, and simultaneously have itself appointed banker to the government of the Southern and Northern protectorates. It availed of every opportunity to press its case before the Colonial Office in London, and the Administration in Nigeria.

On December 1, 1903, for instance, the Bank of Nigeria, through its Secretary, Mr. Lich H. Moseley sent a letter to the Under-Secretary of State for the Colonies in which it argued, *inter alia*, that:

In view of the withdrawal for the present of the arrangement for the transaction of the banking business of the Governments of Northern and Southern Nigeria proposed to this bank in the Crown Agents' Letter of the 1st July 1902 and agreed to in our letter of the 11th July 1902, I am instructed respectfully to make application to the secretary of state for the colonies that the same facilities for the importation of silver coins from the Mint as granted elsewhere in West Africa may be extended to this Bank.¹⁸

Such exchanges as this continued between the bank and the Colonial Office. In the meanwhile, Nigeria merchants, through the West African Trade

¹⁸ Ibid.

Association of Liverpool were also complaining that the Bank of British West Africa was equally unfair to them, being too closely linked with the shipping line. It may be recalled that, these same merchants founded the Bank of Nigeria as a rival to the Bank of British West Africa. A steady stream of complaints from both traders, and the Bank of Nigeria continued. This was the state of hostilities between the banks when on January 12, 1906, Mr. Lich H. Moseley, Secretary to the Bank of Nigeria sent a letter to the Under Secretary of State for the Colonies. In his letter, Moseley, recalled for the benefit of the Colonies Office, a letter from the Crown Agents dated July 1, 1902, to his bank in which the Crown Agents stated that the Secretary of State: was prepared to approve of agreements being entered into for the transaction of the banking business of the governments of Northern and Southern Nigeria on terms of the existing agreements between the governments of the other West African colonies and the Bank of British West Africa.¹⁹

The letter also enquired whether the Bank of Nigeria was prepared to enter into agreements on those lines. Moseley further reminded the Colonial Office that his board “have since made application for a grant of the same facilities for silver coin from the Mint as are enjoyed by others in West Africa.” The Secretary of State at this point in time, was the Earl of Elgin. He caused the following reply to be sent on his behalf by his aide, Mr. R.L. Antrobus, on March 14, 1906, to the Bank of Nigeria:

I am directed by the Earl of Elgin to inform you, in further reply to your letter of the 12th of January, that he is not prepared to approve of the Bank of Nigeria being entrusted with the Government Account in Southern or Northern Nigeria or to entertain the question of granting it special facilities for importation of silver coin; but that he is of opinion that there ought to be an independent Bank in Nigeria, and that, if such Bank were formed by the amalgamation of the two Banks already established in West Africa or otherwise, he would be disposed to consider favourably the question of entrusting the business of Southern Nigeria Government to it, if satisfied as to its financial resources and the general policy of the Board of Management.²⁰

This letter has been quoted *in extenso* for its significance importance. The suggestion that both rival should merge; emanated from the highest level of colonial administration. The Earl of Elgin was of the opinion that both banks should merge in order to attract government patronage and concession. This view was, of course, to be treated as government position on the issue raised by the Bank of Nigeria. It is proper then to think that this was the point at which the seed

¹⁹ Ibid.

²⁰ Ibid.

of merger was sown. The Bank of Nigeria, realizing possibly that its fight against the firmly established Bank of British West Africa was futile may have begun veering towards the consideration of a merger if only in principle then in the year 1906.

In 1907 a Royal Commission on Shipping Rings was set up in London. The main subject of enquiry was freight rate. However, eminent Nigerian merchants led by John Holt, and the firm of Miller Brothers raised the question of Bank of British West Africa's relationship with the shipping lines. They alleged that the bank engaged in trade or used its resources to assist certain shipping companies to trade as merchants. Additionally, the bank, was further alleged to have used its position to influence freight in favour of these shipping companies. Finally, it was stated before the Commission that, it operated its silver import monopoly to the disadvantage of the traders. The Bank of British West Africa defended itself against these charges through its London manager, Leslie Couper. After denying all allegations against his bank, Leslie Couper used the opportunity of enquiry to state the bank's view on its silver import monopoly (easily the most vexed complaint of the merchants) as follows:

The necessity of exercising a control in regard to the circulation of silver coinage is recognized in England, where the issue of silver is solely in the hands of the Bank of England, so in West Africa the extension of commerce decided the government to delegate the supervision of the currency to a responsible bank which would regulate the supply according to the demand and relieve the government of the loss and trouble of repatriating any redundant stock.²¹

The Commission accepted Leslie Couper's testimony and cleared the Bank of British West Africa of any wrongdoings. Hostilities between the Bank of Nigeria and the Bank of British West Africa continued. At a point, the Board of the Bank of British West Africa indicated that it might be willing to offer silver coins at Lagos free of commission to the Bank of Nigeria. The Governor of Southern Nigeria, Sir Walter Egerton to whom this intent was conveyed welcomed the idea. In fact, the governor had earlier favoured the sharing out of the silver privilege and government business between the two banks as a means of ensuring peace. When therefore the suggestion from Bank of British West Africa was made, he wrote at length on the issue to the Colonial Office, and expressed further opinion. The Colonial Office decided to stay any action until the return to England on leave of Sir Walter Egerton on October, 1908.²²

Following his return to England, in March 1909, Sir Walter Egerton attended a meeting in the Colonial Office with one of the Crown Agents, the Deputy

²¹ Fry, R., *op. cit.*, pages 48-49.

²² *Ibid.*

Master of the Royal Mint and other Colonial Office Staff to discuss the position of banking in West Africa. This meeting decided subject to the final approval of the Secretary of State, that the future supply of silver coin to West Africa should be controlled by the Royal Mint. The Mint was also to give equal treatment to all recognized banks. The government's banking business in Southern Nigeria would be divided between the two banks. The meeting further agreed to end the silver agreement with the Bank of British West Africa in Lagos. After this meeting, Sir Walter Egerton returned to Nigeria expecting the confirmation of these decisions by the Secretary of State.

In 1906, it will be recalled, the then Secretary of State, the Earl of Elgin advocated a merger of both banks. In 1908 a new Secretary of state was in office. He is the Earl of Crewe. The Earl of Crewe had already received a petition from leading merchants operating in Lagos, urging him to end the monopoly of the Bank of British West Africa in the importation of silver, which they considered bad. The Bank of British West Africa also sent recommendations of the Governor of Southern Nigeria and others who attended the Colonial Office Meeting, the Earl of Crewe decided that it was not necessary to hurry this matter on and the existing arrangement need not be disturbed for the present until the Governor is properly informed or briefed.²³

This was the state of affairs in Nigeria between the banks when in 1910 Sir Alfred Lewis Jones, chairman and co-founder of the Bank of British West Africa died. The new chairman, Lord Milner, soon came to the realization that hostilities between both banks had to cease. He initiated talks for the business of Bank of Nigeria to be taken over by the Bank of British West Africa, something Lord Elgin, as Secretary of State, first suggested in 1906. A draft agreement providing for the business of the Bank of Nigeria to be taken over by the Bank of British West Africa was signed by both banks on May 5, 1911. A little over a year later, on May 12, 1912, the Board of Bank of British West Africa confirmed in its notification to the Colonial Office, that it has entered into a provisional agreement with the Bank of Nigeria to purchase its business, assets and goodwill. The Bank of Nigeria on its part gave formal notice of its intention to implement the agreement. On June 20, 1912, the formal agreement was sealed and thus a merger was effected and the Bank of British West Africa once again emerged the only bank in Nigeria. It remained the only bank in Nigeria until 1917 when a new rival emerged.

Efficacy of the Merger

The year 1906, was a landmark year in the rivalry between the Bank of British West Africa and the Bank of Nigeria. It was during this year that the Earl of Elgin

²³ Ibid., page 50

first proposed an amalgamation of the two banks. Fry,²⁴ was in error when he stated that Sir Alfred Jones first raised the possibility of a merger with Bank of Nigeria in 1906, and further, that in 1907 Lord Elgin, the Colonial Secretary, had strongly recommended that the two banks should amalgamate. The original idea for an amalgamation between both banks came from the Earl of Elgin in 1906.

In the discussion above, reference was made to a letter from Liverpool manager of the Bank of British West Africa, Mr. J. Couper Addressed to the Under-Secretary of State for the colonies, and dated February 10, 1906. In this letter, Couper held out that the Board of the Bank of British West Africa has: “under consideration the question of extending the sphere of the Bank’s operation into Nigeria.” Couper in his said letter, further solicited government’s opinion on behalf of his Board, on whether his bank would receive government support. The opinion solicited from government actually came in a colonial office reply to Couper’s letter, dated March 14, 1906, accordingly, the Colonial Office made it clear that the Earl of Elgin favoured the emergence of an independent bank in Nigeria. Such a bank, it was further suggested, may be formed by the amalgamation of the two banks already established in the West African colonies. Such an amalgamation, the Earl of Elgrin held out, would lead him into favourably considering the question of entrusting the business of the government of Southern Nigeria to the new bank, if satisfied as to its financial resources and the general policy of the Board of management.²⁵

It is submitted that Couper as the manager of the Bank of British West Africa, brought this letter and its contents to the attention of the Bank’s board then chaired by Sir Alfred Jones. It is further submitted that the idea of annexing the Bank of Nigeria and thus removing this highly determined opponent, appealing to Sir Alfred Jones. It was, therefore, from this point that he began the quest for a take-over of the Bank of Nigeria. Earlier on reference was made to a letter from the aide, Mr. R. L. Antrobus on behalf of the Earl of Elgin being sent to the Bank of Nigeria. It is indeed, of striking significance that both letters were dated March 14, 1906, and expressed identical opinion on amalgamation and the conduct of government business.²⁶

Certainly, the idea of an amalgamation of both banks came from the same source, namely, the Earl of Elgin. This view of the amalgamation story is further strengthened by the fact that the Earl of Elgin himself sent copies of these two letters written on the subject of a merger of both banks, to the colonial Governors in Nigeria from the information gathered from reliable sources. Both Sir Walter

²⁴ Ibid., page 67.

²⁵ A copy of this letter, would be found in the National Archive (SNP6 49/1906)

²⁶ Ibid.

Egerton for Southern Nigeria, and Sir Frederick Lugard for Northern Nigeria received copies of these letters. The thrust of both letters was the same, and their themes common. The Earl of Elgin's covering letter that accompanied copies of his letter to both banks, and which was sent to the colonial governors, bore the same March 14, 1906 date. It was signed by the Earl of Elgin himself, and read as follows:

I have the honour to transmit to you, for your information the accompanying copy of correspondence, as noted in the margin, with the Bank of British West Africa, and the Bank of Nigeria on the subject of banking in Nigeria.²⁷

The marginal note referred to, was a reference, to the dates on which either bank's letter to the Colonial Office was written to him and his own reply thereto. The date indicated against his reply to the two banks was the same; March 14, 1906. It is clear from the foregoing account that it was the Earl of Elgin himself who first conceived the idea of an amalgamation of both banks in 1906, and not in 1907. Certainly, the idea did not originate from Sir Alfred Jones in 1906 as was suggested by Fry in error.

Another important point to note is the nature of the coming together of both banks. Although both banks finally fused into one, there was no "merger" of both banks in a strict legal sense of the term "merger". What really happened was a legal "take-over" of the Bank of Nigeria by the Bank of British West Africa. Firstly, the most important legal point to be noted is that under the agreement reached by both banks, the Bank of Nigeria was completely wound up and ceased to exist. The Bank of British West Africa, on the other hand, retained its original identity and terms of incorporation. Secondly, former branches and agencies of the Bank of Nigeria were rationalized by the Bank of British West Africa. The Bank of Nigeria branches at Jebba in the north, and Burutu, in the south were closed. Those in Lokoja, Zungeru, Warri, and Onitsha remained open and added to the number of Bank of British West Africa branches. The branches at Calabar and Lagos where the Bank of British West Africa already existed were simply absorbed. Finally, there emerged only one board of directors with only three former Bank of Nigeria members. Two of these, got one hundred shares each. Those who got the shares were George Miller and Mazzini Staurt. Both men, along with Clifford Edgar became directors of the Bank of British West Africa.²⁸

²⁷ Ibid.

²⁸ Fry, R., *op cit.*, page 66

The Colonial Bank

Following the amalgamation of the Bank of Nigeria with the Bank of British West Africa, the Bank of British West Africa became once more, the only bank in Nigeria. In 1916, however, a new and more determined competitor emerged. The Colonial Bank, which hitherto had a charter to operate in the West Indies, announced its intention to open up business in West Africa. It was going to open branches at Accra, Lagos, and Zaria, in the Gold Coast (now Ghana), and Nigeria respectively. This decision came as a sequel to the revision of the bank's charter by the British Parliament. By this revision, the Colonial Bank obtained permission to work in any of the territories of the British Empire throughout the world.

The Colonial Bank operation with a capital of £2,000,000 of which £600,000 was paid up; and £150,000 was in reserve. Within two years of its debut, the Colonial Bank established itself in more additional centres in Port Harcourt, Jos and Kano. By 1918, the banks' reserve fund had grown to a big sum of £325,000, and new shares were issued. Following this achievement the banks paid up capital rose to the sum of £750,000. In 1919 the Governor of Nigeria ordered an equal division of silver coin between the two banks. Another round of rivalry similar to what existed in the past was naturally triggered off. The Bank of British West Africa protested the Governor's action to the Colonial Office in London. The Colonial Office approved of the Governor's action and before long the Colonial Bank established itself as a new force to be reckoned with in Nigeria banking business. In 1925, the bank changed its name to become the Barclays Bank (Dominion, Colonial, and Overseas). It rebuffed overtures for a take-over from the Bank of British West Africa and went on to acquire a dominant status.²⁹

The passage of time brought more expatriate banks into the Nigerian banking arena. Among the new arrivals were the British and French Bank for Commerce and Industry. The bank later became the British and French Bank. In October 1961, its Nigerian branches re-christened the United Bank for Africa. The majority shares continued to be held by British and French interests, but American, Dutch, German, Italian and Swiss banks also acquired shares.³⁰ Today, the bank is wholly Nigerian owned. Its government shares were sold to the general public under the privatization scheme of the Nigerian Federal Government. The Bank of America is also another expatriate bank that entered the Nigerian scene. Having ceased to be known as the Bank of America on becoming fully Nigerian owned, it became known as Savannah Bank, with its registered head office in Lagos. The Bank of India similarly became wholly Nigerian owned under a new name of Allied Bank. The American Chase Manhattan Bank, which also entered

²⁹ Ibid., page 91-93, other sources added.

³⁰ Brown, C.V., *Nigerian Banking System* (G. Allen of Union, London 1966) page 24

the scene later, ceased to do business in Nigeria. The Arab Bank later became known as the Nigeria-Arab Bank. All these banks progressed to varying degrees, and had their shares sold to the general public under Nigerian government's privatization and commercialization scheme. Some of these banks have once again merged with others to form a new banking group or have ceased to exist under the Nigerian government recapitalization drive of the year 2005 as directed by the Central Bank of Nigeria.

Emergence of Indigenous Banks

By "indigenous banks", we mean wholly Nigeria owned banks. The term should not be confused with traditional thrift institutions of the pre-colonial era. The object of this account is an examination of those factors that led to the dogged determination of Nigerians to found indigenous banks, independent of the then existing expatriate banks.

The slave trade and colonialism contributed in no small measure to the lowering of the dignity and self-respect of the black man as man. Herein lies the root of all racial discriminatory policies on credits and other bank charges levied by British banks against native Nigerians. It is thus not surprising that the urge to set up a wholly indigenous bank capable of providing for the economic well-being of natives was felt by many Nigerians at the time. An apt illustration of native resentment at such discriminatory practices of British banks is provided by an advertisement of the National Bank of Nigeria which reads:

By a concerted and well planned process of discrimination the African merchants were gradually eliminated from the position of middlemen between the big European firms and the African consumer and in their place was substituted the alien immigrants. The Africans, according to plan, became retail traders and civil servants. This economic strangulation could not have been possible if the African had a strong financial institution of his own. PATRONISE THE NATIONAL BANK OF NIGERIA (sic) and retrieve your lost birth right.³¹

Nationalistic attitude such as that expressed in the above advertisement illustrate the same kind of bitterness felt by other populations which depended on British banks. In former colonies like India, Ceylon (now Sri Lanka), Gold Coast (now Ghana), and Malaya (now Malaysia), the story remained the same. It was, therefore only a question of time before dissatisfied Africans launched their own bank.

Secondly, it has been established as a fact of life that the socio-economic milieu of dynamic societies constantly undergoes the process of regeneration and

³¹ *Tribune* newspaper (Nigeria) February 20, 1952.

development. In the light of such progressive changes, the banking structure must respond to changing circumstances. In the 1930s, when the first indigenous banks emerged, the pace of change in Colonial Nigeria was considerable. Political and Economic changes were taking place and the level of awareness was steadily rising on all fronts. Education and increased contacts with Europe, and the innate propensity of Nigerians to trade, generated such currents and pressures which became increasingly incompatible with continued dominance of the banking sector of the economy by British banks. Clearly, therefore, indigenous banking became desirable in the circumstances.

Thirdly, a willingness by Nigerians to hold their savings in the form of bank deposits meant that among individual Nigerian traders and the small by growing body of civil servants, and other professionals, there would be a ready response to any efforts at setting up banks which could prevent finance at rates lower than those charged by moneylenders. It was thus this secular change in Nigeria financial habits which further contributed to the emergence of indigenous banks.

In the final analysis, the emergence of indigenous banking in Nigeria must be seen as an effort by native Nigerians to break the shackles of economic strangulation by adapting the financial system of the country to meet new demands and challenges. It represented a genuine attempt by Nigerians to bring about the availability of adequate financial assistance towards an effective galvanization of native capital and enterprise. This, of course, was with a view to attaining active and effective participation in Nigerian's commerce, industry, and the general tenor of economic life.

Industrial and Commercial Bank³²

The first three indigenous efforts made at establishing banks, up till 1939, were in chronological order; the Industrial and Commercial Bank; the Nigerian Mercantile Bank; and the National Bank of Nigeria. Research did not yield any detailed information on the industrial and Commercial Bank. Newlyn and Rowan,³³ however, suggest that the Industrial and Commercial Bank appears to have been originally incorporated in England in May 1914, but by 1929 it was both African owned and managed. In 1930, this bank went into compulsory liquidation. In the absence of detailed and accurate records, not much is to be said of this bank. There is, however, an aspect of this bank that required some comments. It appears that the failure of this bank generated some reservations and bitterness among the indigenous population. There were rumours among the

³² Newlyn, W. T. and Rowan, D.C., *Money and Banking in British Colonial Africa* (Oxford, Clarendon, 1954)

³³ Ibid., page 97

native Africans that the failure of this bank had been deliberately engineered by European business and banking interests. These interests, it was further believed, acted in concert with the government whose support and approval was forthcoming. According to Newlyn and Rowan, however:

No doubt the credence given to these baseless rumours is to be explained largely in terms of affronted nationalist pride and disappointed economic expectations. The fact that they gained any support nevertheless, suggests that the Africa depositing public was profoundly ignorant of the principle of banking, only too liable to be blinded by nationalist feeling and suspicion of Europeans, credulous to a degree, and quite unable to protect itself from the depredations of spurious or incompetent bankers.³⁴

This view must at once be rejected as prejudiced and therefore unacceptable. Firstly, even by their own admission, Africans control and management of the bank was very brief. The bank came under African control by 1929, and the very next year, 1930, it went into compulsory liquidation. Any discerning observer must wonder at why the bank suddenly ran into this trouble within so short a time after it changed hands. It is submitted that in view of the bitter rivalry which characterized the relationship between the Bank of Nigeria, and the Bank of British West Africa prior to their amalgamation, and the on-going rivalry between the Bank of British West Africa, and the Barclays Bank DCO (formerly Colonial Bank), that the Europeans certainly viewed with alarm, Africa entry into banking business. Any effective African challenge to their dominant status if successful will have the effect of changing the entire economic landscape of Nigeria. The Europeans therefore worked against the new African bank in their own self-interest.

On the government side, one must not lose sight of the fact that the Colonial government was not unmindful of what effect African economic success will have on nationalist political agitations. It is therefore submitted that, it was in their common interest for both the colonial government and European banking interests to team up and torpedo the industrial and Commercial Bank. In these circumstances, it is wholly wrong to dismiss as “baseless rumours”, African complaints of collusion between government, and European business and banking interests in engineering the demise of the bank.

Neo-colonialism, as it is known today, refers to the economic and financial “aids” with strings duly attached, coming from former colonial masters to their erstwhile colonies. These so-called “aides” are given with a view to remotely influencing and controlling the affairs of these former colonies. If, after more than

³⁴ Ibid.

four decades since the attainment of nationhood, former colonial masters still meddle in the national affairs of their former colonies, largely in their own self-interest, then it is not unthinkable that in the 1930s, European banking and business interests could team up with government to frustrated nascent African banking endeavours. Capitalism is all about competition and private gains. British banks in Nigeria were not eleemosynary institutions, and cannot therefore be said to be unaware of, or uninterested in the dangers to their interests posed by emergent African banks.

In the light of the foregoing submissions, it is strongly concluded, that the failure of the Industrial and Commercial Bank cannot rightly be attributed to mismanagement and incompetence, or to any probable peculation. Newlyn and Rowan do not sound convincing on this point and must therefore have their views rejected as biased in the extreme.

The Nigerian Mercantile Bank

The second indigenous bank to emerge was the Nigerian Mercantile Bank. At its inception, it was registered as the Nigerian Industrial Cooperation Society. It adopted the new name in March 1931. During its five years of existence, it did not attain any remarkable level of progress. With total paid up capital never reaching £1,700, and total deposits only once exceeding £2,000 in 1933,³⁵ its eventual liquidation was therefore only to be expected. It finally came in 1936, but not much is recorded about it. Newlyn and Rowan see the presence, on the board of this bank, of the ex-managing director of the industrial and Commercial Bank as “an interesting comment on the credulity of the African Public in banking matters.” This observation, it is submitted, is not correct. If anything, it further illustrates the fact that Nigerians saw the failure of the Industrial and Commercial Bank as the handiwork of European and government collusion. It is not surprising, therefore, that Nigerians felt they could still trust their fellow Nigerians who in the circumstances, were seen as champions of their struggle against financial and economic emasculation. The very fact that indigenous peoples resented the failure of the Industrial and Commercial Bank would have led them into rally round the new Mercantile Bank in solidarity.

The general perception was that indigenous banks emerged to help indigenous business overcome expatriate discrimination. Furthermore, that expatriate banks (with the active connivance and support of the colonial administration) were out to stifle the growth and success of this new competitor. It is therefore utterly wrong to suggest as Newlyn and Rowan did that the presence of a former manager director of the defunct Industrial and Commercial Bank, as

³⁵ Ibid.

new managing director of the Nigerian Mercantile Bank was bad. It did not represent anything other than a show of indigenous solidarity and support for a worthy cause. In the final analysis, therefore, it presents interesting comments on the growing awareness of the African public in expatriate intrigue in banking matters.

The National Bank of Nigeria

The arrival of the National Bank of Nigeria marked the effective starting point of the history of indigenous banking in Nigeria. The National Bank of Nigeria was incorporated in Lagos as a limited liability company on February 11, 1933, with a nominal share capital of £10,000 out of which about £1,000 was paid up. Newlyn and Rowan, however, seem to dispute the amount of paid up capital. They gave the paid-up capital as £505 at June 30, 1934, and £1,023 at June 30, 1935.³⁶ According to Newlyn and Rowan, the source for their figures was the bank's own annual balance sheets. This conflicts with the bank's own information contained in a four-page supplement which ran in the *Daily Times* newspaper of September 30, 1961. On the occasion of the opening of its new head office on Broad Street, Lagos, in 1961, the supplement which contained a history of the bank written by its management gave the following statement of fact: "The Company was incorporated with a share capital of £10,000 out of which about £1,000 was paid up."

Whatever may have been the exact figure is largely immaterial now. What is of significance, however, is that the history of the bank is an historical saga of courage and sacrifice in the face of odds. It is a lyric in nationalist hopes and aspiration for a place in the free world. Coming shortly after the established British banks, events were such that sceptics did not give it any chance of survival. The circumstances were then such that the public could easily have lost faith in the capacity of the indigenous Nigerian entrepreneur expatriate banking houses that have constantly tried to foster the belief that only very few Nigerians were creditworthy and even these few must be dealt with, with caution. It thus became clear that, for indigenous business to prosper and offer any challenge to European and Levantine concerns, an indigenous bank that could provide easy access to finance was the need of the hour.

It was against this background that Dr. Akinola Maja, Chief Akintunde Adeshingbin, Chief Theophilus Adebayo Doherty and Mr. Alfred Olatunde Johnson, took the initiative of forming the National Bank of Nigeria. In September 1933, these same gentlemen founded the Mutual Aids Society, through which the bank made many of its most risky advances. The Mutual Aids Society

³⁶ Ibid.

was founded “to carry on the business of money lending in all its branches.” The society was registered under the Money-lenders Ordinance, and became an indigenous device designed to carry out the bank’s lending business. In this way, the bank sought to keep itself out of negative publicity should recourse to court become necessary for recovery of loans granted. This device was indeed a clever masterstroke, as the collapse of banks. The success of the bank became at once, the story of a grand alliance between a young and dynamic indigenous bank, and a loyal indigenous population.

As was to be expected, the bank had to contend with campaigns and attempts by entrenched expatriate competitors to stifle it. This reaction from the established British banks was inevitable given the challenge which the National Bank of Nigeria posed. All the big foreign merchants, without exception, refused to extend their patronage to the bank. In March 1955, the Western Regional Government and the bank entered into an agreement which resulted in that government undertaking to lodge forty-five per cent of its funds with the bank. In 1956 the government purchased £1 million representing four per cent cumulative preference shares in the bank through the Western Region Marketing Board. In 1960 these preference shares became converted to ordinary shares with a further £2 million in ordinary shares put in by the Marketing Board.³⁷ The bank, against all odds had come to stay.

One aspect of the banks origin which needs comments has to do with an innocuous observation by Newlyn and Rowan. According to these authors, the board of the National Bank of Nigeria and its Mutual Aids Society featured three ex-directors of the defunct Nigerian Mercantile Bank. These ex-directors were named as Dr. A. Maja, Mr. T.A. Doherty, and Mr. H. A. Subair.³⁸ It does appear to them to be of immense significance that these same ex-directors of the defunct Mercantile Bank, along with others co-founded the highly successful National Bank of Nigeria. The National Bank of Nigeria, by all accounts, grew into an effective banking institution that offered stiff challenge to expatriate banks. The presence on the board of the Nigerian Mercantile Bank, of an ex-director of the pioneer Industrial and Commercial Bank, was seen by Newlyn and Rowan as presenting “an interesting comment on the credulity of the African public in banking matters.”

The inference is that past association with a failed bank meant yet another failure ahead or, more still, that such persons were incompetent bankers. It is argued above that this cannot be the case. The truth of those early failures lay in European and government schemes. The argument may thus be advanced further

³⁷ Brown, C. V., *op. cit.*, page 21-28

³⁸ Newlyn & Rowan, *op. cit.*, page 79

to say that these ex-directors of the defunct Mercantile Bank, now directors of the National Bank of Nigeria brought their past experience into the National Bank. By so doing, they ensured that new steps were taken to combat European banks on a better footing. The most visible manifestation of the plausibility of this contention is provided by the almost simultaneous founding of the Mutual Aids Society by the same directors. This device, designed to handle the risky lending business of the National Bank of Nigeria, ensured that the bank kept out of negative press coverage, and court appearance. In this way, the bank settled down to offer strong banking challenges rooted in strong nationalist sentiments, to expatriate banks. The success of the National Bank of Nigeria at the time is therefore a clear refutation of Newlyn and Rowan's claim that the African public was credulous. This success story of the National Bank of Nigeria is, on the other hand, a sure proof (if any was needed) of the so-called "baseless rumours" among Africans, that the failure of the Industrial and Commercial Bank, and the Nigerian Mercantile Bank, had been deliberately engineered.

The failure of early African attempts at establishing indigenous banks, cannot, therefore, be explained away largely in terms of "affronted African nationalist pride and disappointed economic expectations." Europeans business and banking interests, acting, with the approval and support of the colonial government must take responsibility in part, at least, for these failures. The fact that Nigerians repeatedly went back to patronize indigenous banks each time they sprang up, and the fact that the (by now) more experienced ex-directors successfully ran the National Bank of Nigeria, debunked Newlyn and Roman's unfounded claims. Their assertions that Africans depositing public were profoundly ignorant of the principles of banking, only too liable to be blinded by nationalist feeling and suspicious of Europeans, credulous to a degree quite unable to protect itself from the depredation of spurious or incompetent bankers, is simply bunkum.

The success of the National Bank, in a historical context, at least, is a testimony to the defeat of European intrigue, following the indigenous populations' understanding of the nature of this capitalist and colonialist combine. The sad story, however, is that, the National Bank of Nigeria has today, gone down the road to oblivion. After the brilliant struggle of the 1930s the National Bank of Nigeria should continue to exist, if only as a memento of the African's ability for economic and banking organisation.

The African Continental Bank³⁹

In the years following the end of the Second World War, more indigenous banks were founded in Nigeria, one of such banks is the African Continental Bank. The bank commenced business in 1948. What later became known as the African Continental Bank was originally known as “Tinubu Properties” and was taken over by Dr. Nnamdi Azikiwe for the sum of £250 in 1944. The nominal capital of the bank stood at £250,000 in 1949, with only £9,623 paid-up as at March 31, 1950. From this point, a modest beginning, the African Continental Bank began to show slow but steady progress and by 1955 its paid-up capital has risen to £28,276, in ordinary shares and £3,370 in eight per cent cumulative preference shares.

The bank which has been closely associated with the then Regional Government of the East received a boost in 1955. During the year 1955, the Eastern Region Finance Corporation bought 789,200 worth of cumulative preference shares of the bank. These shares were subsequently taken over by the Eastern Region Finance Corporation. During 1960-61, these shares were converted to ordinary shares and additional £1 million ordinary shares were purchased by the Eastern Region Marketing Board. This purchase was further extended when the Marketing Board took £2 million ordinary shares in 1962. Up till the outbreak of Nigeria’s civil war, the African Continental Bank ranked as one of Nigeria’s largest commercial banks.

Other Indigenous Banks

The Agbonmagbe Bank, which metamorphosed into Wema Bank, became the second oldest indigenous bank to be founded after the National Bank of Nigeria. The bank was founded in 1945, thus it became the first indigenous competitor to the National Bank of Nigeria. Newlyn and Rowan⁴⁰ are, therefore, in error when they submit that the first indigenous competitor to the National Bank of Nigeria did not appear until 1947. However, it is useful to point out that their table,⁴¹ which shows African companies using the style of “Bank”, correctly shows that the Agbonmagbe Bank was incorporated in May 1945. The bank had a nominal share capital of £10,000 at inception, out of which £2,300 was paid up. The bank passed through a period of slow, but relatively stable growth until 1959 when it received a boost in the form of a £200,000 cash deposit from the Western Region Marketing Board. Out of this amount, £80,000 was later converted into shares.⁴²

³⁹ Brown, C. V., *op. cit.*, pages 28-29 and other sources

⁴⁰ Newlyn and Rowan, *op. cit.*, page 104.

⁴¹ *Ibid.*, page 107.

⁴² Brown, C. V., *op. cit.*, page 29

A host of other indigenous banks commonly referred to as “mushroom banks” came to be founded. These banks were founded between 1933 when the first successful indigenous bank was launched, and 1952 when the first Banking Ordinance regulating banking business in Nigeria was passed. It was not desirable to go into any details about these banks because most of them collapsed in no time, while a few never even opened for business after their token registration. With the exception of the Merchants Bank, they had all ceased operation by 1954. Various writers, and reports, have adduced reasons for these failures. The consensus, however, appears to be that these banks failed for two main reasons. Firstly, these banks were grossly under-capitalized. In the thirty year period under review, a total of twenty-six indigenous banks were formed. Eighteen out of these banks were formed in the last fifteen months leading up to the first Banking Ordinance of 1952. Of these, fourteen had a paid up capital of less than J6,000.⁴³

Secondly, there was a tendency towards too rapid expansion. A majority of the indigenous banks seemed to be in a hurry to expand. The Nigerian Farmers and Commercial Bank, for instance, with a paid-up capital of £13,194 had twenty-eight offices. The Nigerian Trust Bank with a paid-up capital of £10,000 had twenty-six offices, while the Standard Bank with a paid-up capital of £13,502 had seven offices.⁴⁴ These and other factors like bad management, and inexperienced approach to banking and finance led to failures. Other small banks were founded after 1952. One of such banks is the Muslim Bank founded in 1958. Nevertheless, the year 1952 had been chosen as a base year for anchoring this consideration of the so-called “mushroom banks”, because it became the symbolic year when the first Banking legislation was passed in Nigeria.

Mixed Banks

So far, we have considered the introduction of banking into Nigeria. These banks, owned and controlled by expatriates, embarked on a policy of deliberate and systematic discrimination against the indigenous peoples of Nigeria. In response to this unsatisfactory state of affairs, and spurred by nationalist flavour, indigenous banks were founded beginning with the formation of the National Bank of Nigeria in 1933. Between the extreme of expatriate banks, on the one hand, and indigenous banks, on the other, there emerged a third category of banks whose ownership cut across expatriate and indigenous lines. These institutions became known as “mixed banks”. They were so referred to on account of their not being wholly-owned by expatriates or wholly-owned by

⁴³ There are scanty records of the number of banks formed during the ‘banking boom’ years and their capital structure, some never even opened for business. Various opinions have been expressed on why these banks failed. See, for instance, Brown C. V. *op. cit.*, page 26 and New Rowan, *op. cit.*, pages 96-112.

⁴⁴ *Ibid.*

indigenous people. Joint capital contributed by Nigerians and expatriates interests lay at the root of their formation.

This class of banks made its debut in the late 1950s. The Bank of Lagos, the Berini (Beirut Riyad) Nigeria Bank, and the Bank of the North belong to this category. The Bank of Lagos was incorporated in 1958 as a joint Swiss and Nigerian partnership, and was licensed to operate as a bank in 1959. The other two banks in this category, namely, the Berini (Beirut Riyad) Nigeria Bank, and the Bank of the North were both Lebanese and Nigerian Joint Ventures. The Bank of the North was conceived as a partnership between Nigeria, through the mechanism of the Northern Region Development Corporation.

The Corporation which was founded as a government concern, held majority shares at inception. Subsequent developments gave the Lebanese partners control of the bank by 1962. This situation became redressed only in the mid-1970s when, following the indigenization exercise, the bank was completely taken over by the Northern states governments. After its take-over the bank came under the umbrella of the Northern Nigerian Development Corporation. The bank's registered head office is situated in Kano. Although the straight classification of banks into expatriate, indigenous, and mixed is no longer necessary today, yet this was the backdrop against which banking business sought to put into the hands of Nigerians, what came to be regarded as "commanding heights" of the economy.

Summary

One of the cardinal objectives of this chapter has been the establishment of the origins of modern banking in Nigeria. The origin of modern banking, thus, lay in Nigeria's colonial past. Colonial conquest of Nigeria and the virtual transplantation of European institutions, systems of government, trade, and religion into Nigeria marked the origin of banking in Nigeria. The shipping concerns of Elder Dempster & Co., must be credited for its catalytic role in bringing about the establishment of the pioneer Bank of British West Africa. The founding and the nurturing of this bank owed much to the pioneering spirit of Sir Alfred Lewis Jones, and Mr. George Williams Neville.

Capitalism is essentially competitive with the urge of making profit and individual gains. Yet, the emergence of the Bank of Nigeria as a rival institution to the Bank of British West Africa generated more bitterness than economic or commercial rivalry. It may be concluded that, the immense pressures and lobbying that went on in London between protagonists of both banks with regard to silver import into Nigeria in particular, and West Africa in general, lay the root of their eventual amalgamation. Lord Elgin, then the Colonial Secretary, must

have found it extremely difficult taking sides, hence, his suggestion of a merger between both banks. This merger, when it finally came, restored the monopoly status of the Bank of British West Africa. With monopoly, came abuse and discrimination against the native population, which even the arrival of the Colonial Bank in 1916 did not abate. Indeed, it accentuated further.

Just as the growth of Atlantic trade and the monetization of Nigerian economy fostered banking in Nigeria, so did discrimination against Nigerians give rise to the establishment of successful indigenous banks, beginning with the National Bank of Nigeria. Indeed, the word “Risorgimento” is perhaps the finest epitome of the emergence of indigenous banking in Nigeria. The founding of the National Bank of Nigeria in 1933, and subsequently regional government banking policies in the East and West, had the same goal. The mobilization of funds and the availability of capital to the indigenous business community as an effective means of ensuring full indigenous participation in Nigerian’s commerce and industry became a credo. Public policy support for indigenous bank was thus the underlying motive for the Eastern Region government’s pumping funds into the African Continental Bank in 1950 and the early 1960s. A similar philosophy guided the Western Region government’s injection of funds into the National Bank of Nigeria in 1955 and beyond, as well as into the Agbonmagbe Bank.

It is arguable that without these government investments, these banks would have collapsed along with the so-called mushroom banks, the rationale for governmental support may thus be summarized as the desire of ending expatriate monopoly of monetary transactions, the liberalization of credit facilities for indigenous business community, encouragement of the survival and development of indigenous banking, and the long run ownership of State banks. The arrival of banking in Nigeria, was, however, not accompanied by any simultaneous development of banking laws and regulations. The period from 1891 to 1951 may, therefore, be seen as a free banking era. During this period, there were no regulatory laws and virtually any interested party entered the field of banking. The attendant confusion and eventual collapse of mushroom banks, with the concomitant hardship this entailed for depositors, led to the first bank legislation.

Chapter 2

The Structure of Nigerian Banking System

The Commercial Banks

Definition

Commercial banks are generally referred to as those banking institutions that create money in the form of demand deposits. By far today, the largest part of the Nigerian money stock consists of deposits which are debts of the commercial banks. The adjunct “commercial” is thought to be a misnomer. It came to be tagged to this type of banking institutions because of a general belief in the United Kingdom, over a century and half years ago, that banks which accept demand liabilities should restrict their lending to highly liquid loans for short-term commercial purposes.¹ But times have changed and the commercial banks no longer restrict their lending policies to commerce only but the term continues to be used the world over. The term “commercial bank” is now, defined in section 61 of the BOFID as “any bank in Nigeria whose business includes the acceptance of deposits withdrawal by cheques.” A “deposit” is further defined as meaning “money lodged with any person whether or not for the purpose of any interest and dividend’ and whether or not such money ‘is repayable upon demand upon a given’ period of notice or upon a fixed ‘date’.”

Origin

There has not been a consensus as to the time when commercial banking system came into being in Nigeria. According to one school of thought, the system is older than the central banking system in the country. The proponents of this point to the facts that not only was the first commercial bank (now First Bank PLC) established in 1894,² but also that when the CBN commenced operation in 1959,³ there were already about twelve commercial banks operating in and around the country. Another school dates establishment of the commercial banking

¹ See Shapire, Solomon and White, *Money and Banking*, 5th Edn. at p. 68.

² See also Chapter one above for more details

³ See Chapter two, *supra*, for more details.

system in the country from the date when the “fixed” relationship between the Nigerian interest rate and those of the London market was abandoned sequel to the promulgation of the then Central Bank (Currency Conversion) Decree No. 51 of 1968, or even from the acquisition of majority share in expatriate Enterprise Promotion Decree No. of 1972, as amended

Functions

The functions of the commercial banks can broadly be classified into two, namely, the money-creating and service-rendering functions. The more important of these, within the national economy, is the money-creating function which is accomplished through the mobilization of capital. This involves not only the raising of funds or collection and pooling of bank deposits but also the provision of credit to the various sectors of the national economy. Through their grant of loans and investments, they add to the supply of funds to the credit market while by reducing them, they invariably reduce the supply of funds:

Thus by these activities, they affect the volume of funds available to the capital market for lending, the level of interest rates and the volume of aggregate spending both for consumption and investment.

The service rendering function of the commercial banks comprise:

1. the keeping of accounts for their customers, which may be current, savings or time-deposit;
2. the provision of facilities for domestic and foreign remittances for their customers, including the provision of ordinary cheques travellers cheques and foreign currency;
3. the collection and settlement of national and international debts arising from domestic and external trade for their customers including the provision of letters of credit.
4. the provision of facilities for their customers for the saving of their money and for the safe custody of their valuables’
5. undertaking visibility studies and rendering of financial and investment advice and other corporate help to their customers’ and
6. the undertaking of trust and administration of estates especially for their deceased customers.

Features

A striking feature of the Nigerian commercial banking system is branch-banking in contrast with the unit-banking system. The branch banking system, which is prevalent in the United Kingdom, is based on a single bank operating many branches in the country with one of these operating as the Head Office. This

contrasts with the unit-banking system, which operates in the United States of America, in which each bank operates from new office, as a separate and independent organization, neither owned nor controlled by another bank. Another important feature of the Nigerian commercial banking system is that more than eighty per cent of the existing network of such banks is concentrated in the urban areas. More than seventy-five per cent of the Nigerian population live in the rural areas, resulting therefore in the structure in which the greater proportion of Nigerians has no access to banks. Even in the urban areas, the greater number of such banks is concentrated in the State capitals and a few other important towns. It is for this reason that the CBN has directed the commercial banks to open branches in the rural areas.”⁴

Merchant Banks

Origin and Definition

The origin of merchant banks can be traced to the part played by merchants in early times in financing international trade. In London, the institutions known as “merchant banks” are seldom “merchants” neither are they by any means “bankers”. The title or designation is often used as a generic description of firms or institutions that operate in the financial sector whether they perform pure banking services or merchandising services or not.⁵

Merchant banking is of recent development in Nigeria. Neither the Banking Ordinances of 1952 and 1958 nor the Banking Decree of 1969 appeared to have anticipated merchant banking as a distinct and separate type of banking business requiring separate treatment. On the other hand, it is possible to presume that the matter was subsumed under the term “acceptance houses” and “discount houses”.

However, under the BOFID, the term is defined as “a bank whose business includes receiving deposits on deposit account, provision of finance, consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person”.⁶ The first merchant banking business in Nigeria began in 1961 with the opening by Philip Hills of London of an office in Lagos.

In 1969, the merchant banking activities of the firm was transferred to and employed as springboard for the establishment of the full-fledged merchant bank in the country, the Nigerian Acceptances Limited (NAL).

This institution planned and monopolized what merchant business that was available until the early seventies when other merchant banks began also to open

⁴ See generally on this, Mr. Oladele, *Rural Banking Strategies and Policies of Government*, CBN Bulletin, 20th Anniversary Edition, July, 1979, at pp. 48-54.

⁵ See Clay, C.J.J. *Modern Merchant Banking*, 1959.

⁶ See sec. 61

and operate in the country. Presently, and when compared with commercial banks, there are only sixty companies licensed to operate and are operating as merchant banks in Nigeria.

Functions

Although the activities of merchant banks were originally and still are predominately intricately connected with foreign trade, and with international movement of goods, the pattern of business is constantly changing. Thus in recent times, these types of banks have changed considerably both in form and structure and have acquired other functions also. However, the authorities in Nigeria have never actually made known the function for which merchant banking licences have been granted. It is for this reason that, perhaps, merchant bank themselves have continued to maintain their original function and only play a fringe role in the Nigerian banking system. This may also be explained by the fact that merchant banks play a more positive role in an intensively capitalized and industrialized community, which Nigeria is only striving to attain.

Meanwhile, in Nigeria, merchant banks continue to invest their capital funds in promising industries or in financing external trade; they do, however, also provide some of the services as commercial banks for their deliberately restricted range of customers. Generally, their function include the following:

- a. financing trade, real estate, agriculture, industrial and related activities, particularly capital equipment;
- b. issuing and dealing in shares, debenture stock and other securities including federal and state government stocks;
- c. taking and placing deposits and dealing in money market instruments, including banker's acceptance and commercial notes;
- d. arranging syndicated credits and providing direct loans and overdrafts both for short and long-term periods;
- e. providing trade finance services such as letters of credit, bills for collection and foreign exchange transactions;
- f. managing of investment portfolios and advising on financial matters such as direct foreign investments, mergers and acquisitions, project finance and other financial matters.

Form and Structure

Merchant banks differ from commercial banks in three main respects. First, they do not accept and open accounts for any member of the general public who cares to apply. They do so only for a restricted range of customers, chosen individually and deliberately to reflect their special status. Secondly, they use the deposits

lodged with them together with any money borrowed by them strictly for the purpose of financing the range of business for which they are individually and specifically familiar, such as overseas trade, issue of industrial securities, and management of investment portfolios. Thirdly, they do not create money in the form of demand deposits and therefore have no demand liabilities neither do they ordinarily issue cheque books to their customers as would the commercial banks. A distinguishing characteristic of merchant banks is their skill particularly in arranging large loans through the issue of bonds placed internationally, undertaking prospective works and arranging loan syndicates.

Development Banks

Origin and Concept

A major development in the institutional framework in international as well as national economies has been the spectacular growth of development banks and development banking. Development banks have taken diverse forms despite frequent similarity of formal title, including “development banks”, “development corporations” “finance corporations”, etc. The term “development bank” is generic employed to describe a financial institution, not always a bank, which has for its purpose the provision of capital and or other material assistance to aid development in a particular sector of the International or national economy. Two main types may be emphasized here, namely, the pure development banks which perform the function of providing capital to a definite or selected group of clients and the development corporations which in addition may render various kinds of technical, managerial, commercial and other assistance to their clients.⁷

Development banking has its origin in the devastation of World War II at the end of which national leaders principally in Europe and America put their heads and minds together on how to salvage their war-torn economies. It was this that gave birth to the premier development bank, the International Bank for Reconstruction and Development (World Bank). The World Bank was established in 1946 following the Bretton Wood Agreement of 1944 between the world leaders at the time and epitomizes international development banking at its apex. Following this, the movement for the setting up of regional as well as national development banks was set in motion and soon spread to most countries.⁸

In Nigeria, inadequacy or insufficiency of indigenous private investments is very often due to shortage of capital. The Nigerian governments over the years

⁷See generally, H.M. O'sha, *Development Banking and Nigerian Economic Growth*, CBN Bulletin, *Supra*, at pp. 19-25

⁸ See generally, William Diamond, *Development Banks*, (1957); Shirley Boskey, *Problems and Prospects of Development Banks*, (1959).

have tried to deal with this problem by creating a number of development banks or “loan boards” as they were originally conceptualised. These are essentially designed to handle government investments in selected or targeted sectors of the national economy aimed at filling the gaps created by the inadequacy or insufficiency of private capital and investment. Thus, they have become financial institutions which plan, finance and carry out investment projects or programmes for or on behalf of the government. They have made it possible for the country to launch a number of successful projects that would never have otherwise materialized and thus have performed positive functions. Specifically, they provide the basic Ingredients of economic development and adjustments, such as the necessary finance enterprise, technical and managerial assistance which have been in short supply. In this wise, they perform not only the banking function of making funds available for development projects but also the development function of providing technical and managerial assistance to the needy sectors of the national economy.

Development banks began to appear as a feature of the Nigerian banking system just about the time the country began to embark upon development plans. Basically, the movement towards development banking and development planning came mutually to reinforce each other. The first of such development plans was launched in 1946 to cover the period 1943-1956 and soon afterwards, the Nigerian Development Board was established by the federal government to help promote the realization of the plan. The Board was however subsequently dissolved in 1949 and replaced with four new boards, namely, the Eastern, Western, Northern Regional Development Boards and Lagos and Colony Development Board. These Boards took over the roles and activities of their predecessor in their respective areas and soon began to extend financial assistance to industrial and agricultural sectors. A turning point in the history of development banking in Nigeria came in 1956 with the dissolution of the Lagos and Colony Development Board and its replacement with two new financial institutions. These were the Western Region Finance Corporation which took over the commitments of the board and the Federal Loan Board which took over the outstanding loans of the board in the then federal territory of Lagos. The latter was also specifically charged with the responsibility of promoting industrial development in and around Lagos, in the case of large industrial projects and throughout Nigeria in other cases. In the same year, both the Eastern Nigeria Development Corporation (ENDC) and the Northern Nigeria Development Corporation (NNDC) were established and charged with similar responsibility in their respective regions.

Today, in addition to development and finance corporations, there are also created by the federal government development banks specifically established to contribute to the development of specific sectors of the national economy. Presently, they comprise the National Industrial Development Bank (NIDB), National Agricultural and Cooperative Bank (NACB), Nigerian Bank for Commerce and Industry (NBCI), the Federal Mortgage Bank of Nigeria (FMBN) and the Nigerian Export import Bank (NEXIM). These banks were not directly under the control and supervision of the CBN and as such are not directly affected by the CBN's monetary and credit policy guidelines. However, by virtue of section 23 of the BOFI (Amendment) Decree No. 33 of 1998, the CBN has now been granted power to examine the books and affairs of these banks, from time to time. The scope of their operations requires some detailed examination and appraisal for proper understanding and appreciation of their significance.

The Nigeria Industrial Development Bank (NIDB)

This is the premier development bank in Nigeria which set the structure and function which others have followed. Its resources are also bigger than any other development bank in operation. The establishment of the bank was the outcome of a series of discussions between the Nigerian government, the World Bank group and private investors in Nigeria. It was set up in January 22, 1964, following the restructuring of the Investment Company of Nigeria (ICON). The later was itself incorporated on October 17, 1959 as an industrial development finance company and, except for the 25 per cent of the initial share capital contributed by the CBN, the company was almost entirely subscribed to by foreign business concerns.⁹ The share capital of the new financial institution has been restructured and reallocated in such a way that when fully paid-up, the federal government will hold 75 per cent of its shares, the CBN 14 per cent and private Nigerians 1%.

The NDIB was set up with the primary aim of financing industrial projects and encouraging indigenous investors. In this regard, it was charged with the responsibility of providing medium and long-term finance to the non-petroleum, mining and industrial projects in the country and the related technical and managerial services. Thus the bank has two basic functions, namely, the banking and the development functions. The banking function consists of the provision of medium and long-term finance to industrial projects in the country. Its development functions includes the investigation of new investment opportunities either by itself or through those brought to it by promoters, general assessment of the viability of such projects from both the economic and financial

⁹ International Finance Corporation (IFC) 25%, private foreign financing institutions 49% and private Nigerian financial intuitions and private individuals 1%

standpoints and the provision of technical and managerial assistance to client projects. The bank in accomplishing these objectives operates purely as a commercial enterprise and follow strictly economical roles in considering loans to accredited and deserving indigenous businesses. In its organizational structure, the NDIB, in its first eight years of establishment, operated from its head office in Lagos alone. Then it had only four departments in the organization structure of its head office. But over the years, the rapid growth in its resources and operation has generated changes in its organization. It now has thirteen departments each headed by a departmental manager, and other units. The departments comprise the following:

- 1) **Accounts:** which handles the accounts of the bank ensuring that the bank's clients meet their debt repayment and service obligation;
- 2) **Administration:** which is responsible for recruitment of personnel and general administration;
- 3) **Staff-Training:** which handles staff-training and manpower developments;
- 4) **Promotion and Development:** which initiates industrial projects and also develops inchoate proposals submitted by promoters of NDIB's financial assistance;
- 5) **Appraisal,** which evaluates the technical and financial viability of project proposal.
- 6) **Legal:** which is responsible for the legal aspects of project appraisal and disbursement of approved funds;
- 7) **Company Secretariat:** which is responsible for board meetings and other corporate matters;
- 8) **Management Consultancy:** which is responsible for consultancy to NIDB assisted projects and other companies and institutions;
- 9) **Internal Audit:** which is responsible for internal audit and control;
- 10) **Financial Institution:** which is in 'charge of NDIB's relation with other Nigerian as well as foreign development financial institutions;
- 11) **Reception and Reparation:** which receives application for financial assistance and summarizes them for the Investment Planning Committee which in turn screens them in relation to NIDB's scope of investment and sectorial priorities;
- 12) **Investment Supervision:** which supervises and monitors the execution of NDIB's assisted projects;
- 13) **Research:** which monitors NDIB's operational environment, provides statistical underpinning for its operations and 'handles market and economic analysis of projects.

Owing to the rapid growth of the bank's resources and operation during the "oil boom" period the head office was decentralized into area offices at Kaduna (1972), Aba (1973), Bauchi and Akure (1979) and subsequently Lagos and FCT Abuja. Each area office is headed by an executive director and these were initially, granted so limited powers that they were little, known in their respective areas of operation. However in 1980, there was a 'full-scale re-organization with a view to making 'the impact of the bank felt throughout the country in keeping with the national objective of balanced development. As a result, the area offices were granted much wider powers and in 1984, they were renamed area administrations. This impacted to facilitate further the much desired industrial dispersal by making the services of the bank easily available to all industrialists in all parts of the country. Consequently, the Area Administrations are now authorized to appraise projects in which the NIDB has an exposure of up to 'one million naira. They are also required to participate in the supervision of NDIB assisted projects located in their respective areas:

- a) The areas of jurisdiction of the area administrators are,
- b) Lagos Area Administration-Lagos and Ogun States, with its headquarters at Lagos;
- c) North-East Area Administration—comprising Bauchi, Gombe, Bomb, Yobe, Adamawa, Taraba, Plateau ad Nasarawa States, with its headquarters at Bauchi;
- d) North-West Area Administration—comprising Kaduna, Katsina, Niger, Sokoto, Kebbi, Zamfara, Jigawa and 'Kano States, with its headquarters at Kaduna;
- e) South-East Area Administration—comprising Anambra, Enugu, Ebonyi, Benue, Kogi, Cro s River, Akwa Ibom, Imo, Abia, Bayelsa and Rivers States, with its headquarters at Aba;
- f) South-West Area Administration—comprising Edo, Delta, Kwara, Ondo, Ekiti, Osun and Oyo States, with its headquarters at Akure;
- g) FCT Abuja Area Administration—Abuja.

Nigerian Bank for Commerce and Industry (NBCI)

The bank was established under Decree No. 22, 1973 following the promulgation of the Nigerian Enterprises Promotion Decree No. 4 of 1972. 'The latter decree made it compulsory for Nigerians to hold 60 per cent equity share in certain listed foreign companies while also reserving investment in certain sectors of the economy' exclusively to Nigerians.

The Bank was initially established with an authorized share capital of ₦50,000,000. However, owing to the tremendous increase in the number of small

and medium-scale enterprises, its capital was increased to ₦100,000,000. The federal government and the CBN control 60 per cent and 40 per cent of the bank's equity share capital, respectively.

The bank was established principally to provide equity capital and loan funds to indigenous persons, institutions and organizations for medium and long-term investments in industry and commerce. It was also expected to engage participate in other aspects of normal commercial and merchant banking business as may be directed by the Minister of Finance, it was therefore strictly speaking not an ordinary development bank. This wide scope of its operation became necessary as a result of the apparent inability to buy up the shares and firms put up for sale by foreign companies and individuals pursuant to the promulgation of the Nigerian Enterprises Promotion Decree, *supra*. In addition and, specifically, due to the glaring financial inadequacies of most Nigerians at the time, the bank was also expected to acquire and hold for prospective buyers some shares which could not at the time be taken up by Nigerians. The bank was therefore established primarily: a) to support industrial, agro-based commercial and service projects by providing them with both equity and loan finances; b) to provide a whole range of allied financial services such as loan syndicates, guarantee of letters of credit and bills of collection, feasibility studies, management consultancy, etc.

In executing its functions, the NBCI have been given specific powers:

- i. to engage in all aspects of merchant banking particularly confirmation of bills and financing obligations of third parties and acceptance and discounting of bills;
- ii. to underwrite such stocks, shares and debentures as are issued in furtherance of the policy of the federal government;
- iii. to purchase and sell stocks and shares quoted in the Nigerian Stock Exchange;
- iv. to provide guarantees including those in respect of export credit and letters of credit issued by licensed banks;
- v. to accept term deposits from the public, finance institutions, trust funds, the post office and such other bodies as the board of directors may direct;
- vi. to provide chequering facilities for its customers;
- vii. to borrow by way of loans, with the approval of the Minister of Finance, from any source any monies required by the bank for meeting its obligations and discharging its functions;
- viii. to secure the payment of any money borrowed by the bank in such manner as it deems fit;
- ix. to receive and grant loans and advances and other monies on deposit or otherwise from the federal government, the CBN and commercial banks and the public in general; and

- x. to maintain a general reserve fund.¹⁰

The bank has also been given the power to make regulations, rules and bye-laws in relation to these specific functions. It may, with the approval of the Minister of Finance, make regulations as may be necessary for giving effect to the provisions of the decree and in particular, for

- 1) governing the granting of loans, advances and the making of deposits;
- 2) regulating the relationship between the bank and other financial institutions;
- 3) prescribing the terms, conditions, rates of interest, fees or administrative charges in respect of advances, credit guarantees and any other transaction which the board may undertake from time to time;
- 4) prescribing forms of applications, agreements and other materials necessary for the control of grant of advances, credit guarantees and other transactions which the bank may undertake from time to time;
- 5) determining and prescribing the provisions as to securities that may be required for loans and such collaterals which shall be made available as securities for loans granted; and
- 6) prescribing such other matters as may be incidental or supplemental to the functions of the bank.¹¹

In addition to these functions and powers, the NBCI is charged with the responsibility of promoting small-scale industrial development in Nigeria. To this end, it has been charged with the operation of the Small-Scale Enterprises Loan Scheme of and for the Federal Ministry of Commerce and Industry. To this effect, the bank has evolved a revolving loan scheme under which small-scale industries are financed out of the actual loan repayments in the respective states. This in effect means that the amount of loans available to businessmen in each state under the scheme is relative to the amount of loan repayments in the state concerned. The bank, in practice, does not simply grant loans to deserving businessmen but also ensures that the loans are properly utilized. To this end, it has established what is known as the Entrepreneurship Development Programme (EDP), in addition to the routine project appraisal. The EDP scheme is designed for the purpose of developing the managerial skills of the prospective investors and other management groups. The bank has also established Small-Scale and Medium-Scale Enterprises Pilot Schemes in five states, namely, Cross River, Imo, Niger, Ondo and Plateau States. The scheme was sponsored by the World Bank and has a team of the Industrial Development Bank of India as consultants. The

¹⁰ See Secs. 1, 2, 7, and 8.

¹¹ See Secs. 12.

aim of the scheme is the development of a core of a trained manpower and institutional structure capable of providing technical advice and credit to viable small-scale and medium scale enterprises.

National Agricultural and Co-operative Bank (NACB)

This is the third of the federal development banks having been established in 1973 as the National Agricultural Bank (NAB) under Decree No. 22 of that year. The bank was then assigned the singular function of providing loans for investment in the agricultural sector of the national economy. By virtue of Decree No. 28 of 1978, the name of the bank was changed to the National Agricultural and Co-Operative Bank (NACB), with its responsibilities enlarged include the financing of co-operative societies. The bank sources its funds from government subventions, credit short-fall on agricultural loans through the CBN and loans from international finance institutions. Such international finance institutions include the International Bank for Reconstruction and Development (World Bank), the African Development Bank (ADB), the European Investment Bank (EIB) added the International Fund for Agricultural Development (IFAD).

The functions and activities of the bank have further widened by the need of the ever growing and changing phases of Nigerian development especially in the agricultural sector. The bank now provides loans for individual farmers, co-operative organizations, limited liability companies and federal and state agricultural and agro-allied agencies. It also finances direct investments in the equity capitals of the major agricultural and agro-allied industrial ventures in the country. In this respect, it finances all forms of agricultural projects, which include arable and tree cropping, horticulture, poultry, piggery, cattle, rabbitry, fishery, forestry and timber production. In exceptional cases, the bank provides guarantees for viable agricultural and agro-allied ventures to enable them raise finance either locally or from abroad. The bank also maintains a consultancy service which is available to prospective farmers for efficient preparation of agricultural feasibility studies.

The bank serves the whole country and at the apex of its organizational structure is a head office located in Kaduna. However, in order to facilitate its operations, it maintains branch offices in all the states but the newly created ones, including one at the Federal Capital, Abuja. The policy and management of the affairs of the bank is charged to its board of directors, and its day-to-day administration to its managing director and chief executive.

The Federal Mortgage Bank of Nigeria (FMBN)

The bank was established by Decree No. 7 of 1977 as a successor to the Nigerian Building Society which has existed since 1957. The decree provided for the

dissolution of the Society and for the transfer of its assets and liabilities to the bank. The bank was established principally to provide either directly or through other institutions long-term credit facilities to individual Nigerians desiring to acquire houses of their own. It was established as a body corporate with perpetual succession, power to sue and be sued and to acquire, hold and dispose of property for the realization of its aims and purpose and for the performance of its functions.¹²

The bank was assigned five principal functions, which are:¹³

- 1) the provision of long-term credit facilities directly to individual Nigerians desiring to acquire houses of their own at such rates and upon such terms as may be determined by the board in accordance with the policy of the Federal Executive Council;
- 2) the provision of long-term credit facilities to mortgage institutions to enable these institutions grant comparable facilities to Nigerian individuals desiring to own their houses;
- 3) the encouragement and development of mortgage institutions at both national and state levels;
- 4) the supervision and control of mortgage institutions in Nigeria in accordance with such direction as may be given to that behalf by the Federal Executive Council; and
- 5) the provision with the approve of the minister charged with responsibility for housing, at competitive commercial rates of interests, of credit facilities to commercial property developers, estate agents and developers of offices and other specialized types of buildings.

In order to enable it discharge its functions, the bank was granted the following powers:¹⁴

- a. accept term deposits and savings from mortgage institutions, trust funds, the post office and private individuals as the Board may determine;
- b. promote the mobilization of savings from the general public;
- c. invest in companies engaged in the manufacture or production of building materials in the country with a view to stabilizing the cost of such materials;
- d. furnish financial advice and provide or assist in the provision of managerial, technical and administrative services for companies engaged in building construction and development in the country;
- e. guarantee loans from private investment sources for building development;

¹² See Secs. 1.

¹³ See Secs. 2(1), *supra*.

¹⁴ See sec. 7(4), *supra*.

- f. provide guarantees including guarantees in respect of promissory notes and other bills of exchange issued by licensed banks in the country and to discount such notes and bills;
- g. issue its own securities including debentures and bonds under federal government guarantees and issue promissory notes and other bills of exchange for the purpose of raising funds from finance institutions;
- h. establish a sinking fund for the redemption of the securities issued by it and provide for contribution by it to the sinking fund;
- i. carry out research aimed at improving housing patterns and standards in both urban and rural areas of the country;
- j. carry out research on mortgage finance activities and building construction in the country;
- k. organize and operate in collaboration with reputable insurance companies a mortgage protection system designed to guarantee liquidity to mortgage institutions as well as afford them the opportunity of having liberal premium terms;
- l. do anything and enter into any transaction which in its opinion is necessary to ensure the proper performance of its functions as contained in the decree; and
- m. with the approval of the minister charged with the responsibility for housing borrow from any source any money required for meeting its obligations and discharging its functions under the decree.

Following the announcement of the National Housing Policy in 1990 and the promulgation of Decree No. 3 of 1991, the bank was further empowered to license and regulate mortgage institutions in Nigeria and to act as the apex regulatory body for the mortgage industry.

The Nigerian Export-Import Bank (NEXIM)

The bank was first conceived under the 1962 First National Development Plan as an export credit agency whose main activity was to “undertake the insurance of Nigeria’s export crops.” It was thought that the provision of risk-bearing facilities by the proposed entity would enhance financing for exports which in 1962 meant agricultural products to which the body was to restrict its support and services. Apparently because of the narrow focus and the fact that other developments in the economy diverted attention from the issue it was not pursued for some time. The idea was however revived in succeeding National Development Plans under which the body was designed either as a provider of risk management services exclusively or as an Exim Bank to provide both finance and risk-bearing facilities. In 1977, the federal government designated the CBN as the lead-agency to establish the organization and in 1988, through the instrumentality of Decree

No.15, the organization metamorphosed into the Nigerian Export Credit Guarantee and Insurance Corporation. Decree 38 of 1991 repeals the 1988 decree and re-established the organization as the Nigerian Export Import Bank (NEXIM) with a share capital of 500,000,000 shared equally between the Federal Government of Nigeria and the CBN. The objects of the bank are:¹⁵

1. to establish and carry on business of export credit guarantee and export credit insurance, with a head office in Nigeria and other place of business in Nigeria as may be determined by the board of the bank from time to time;
2. to design and implement schemes of export guarantee for parties carrying on business in Nigeria in connection with the export or manufacture, treatment or distribution of goods for export or the rendering of services or of any other matter which appears to the bank conducive to the purpose of encouraging trade with other countries;
3. to undertake and guarantee the insurance of export credit and for that purpose to enter, with or for the benefit of parties carrying on business in Nigeria, contracts of insurance against risk of monetary loss or other monetary detriment and resulting from the failure to receive payment in connection with or otherwise arising out of acts or transaction in the course of or for the purpose of trade with persons In any other country;
4. to accept reinsurance of all kinds and to enter into reinsurance agreements with parties whether resident in or outside Nigeria against all or any risk or liability assumed by the bank under any agreement, insurance policy or other schemes entered into by the bank;
5. to enter into guarantee agreements with other parties to guarantee payment in specific circumstances;
6. to provide insurance against loss whether on the export of goods or the provision of services or on loans made to facilitate the export of such goods or the provision of such services;
7. to lend and advance money or give credit to such persons or companies on such terms and conditions as may seem expedient and in particular to customers, companies, corporations, firms, arid other bodies which have dealings with the bank 'arid to give guarantee or become Surety and give security for any such persons or companies; and
8. subject to the provisions of any laws in force, to buy and sell foreign currency - exchange and to accept money for remittance to all countries.

¹⁵ See Secs. 5 of Decree No. 15, 1991

The bank has power to raise funds in any foreign currency, with the approval of the Minister of Finance, from the following sources:¹⁶

- i) multilateral development banks and institutions, such as the International Bank for Reconstruction and Development (World Bank);
- ii) Nigeria's external reserve;
- iii) lines of commercial credits, 'either directly or in association with other persons; and
- iv) regional development banks.

Specialized Banking Institutions

The federal government, at various times, had established some special banking institutions to cater mainly for the banking needs of some segments of the Nigerian society, such as peasant farmers, petty traders and deprived or disadvantaged communities or peoples. The banks so far established to serve these needs include the People's Bank of Nigeria (PBN), the Community Banks (CMBs) and the Urban Development Bank of Nigeria (UDBN). As in the case of the Development Banks, the CBN by virtue of section 23 of the BOFI (Amendment) Decree No. 38 of 1998 has now been granted power to oversee the books and affairs of these banks. These require further and detailed examination.

People's Bank of Nigeria (PBN)

The decision to establish this bank was first announced by the federal Government in the 1989 budget with an initial take off grant of ₦30,000,000. The bank was formally legally constituted by Decree 22 of 1990, as a body corporate with perpetual succession, and a common seal. It may sue and be sued and for the purpose of carrying out its functions under the decree may acquire, hold and dispose of property.¹⁷ The bank was established essentially to provide the credit needs of small borrowers-who cannot meet the stringent collateral requirements normally demanded by traditional commercial banks. Thus, the bank facilitates access to credit by the economic operators at the grassroots level and thereby increase their self-reliance. Specifically, the functions of the bank include,¹⁸

- a. the provision of basic credit requirements of the under-privileged Nigerians who are involved in legitimate economic activities in both urban and rural areas and who cannot normally benefit from the services of the orthodox banking system due to their inability to provide collateral security;

¹⁶ See *ibid.*, sec.

¹⁷ See Secs. 1(2)(3) of the Decree.

¹⁸ See *ibid.*, sec. 2(1).

- b. the acceptance of savings from the same group of customers and make repayment of such savings together with any interest thereon, after placing the money in bulk sums on short term deposits with commercial and merchant banks.

The decree, in section 2(2) defines “under-privileged Nigerians” as those confirmed by their various trades and professional groups, including roadside mechanics, self-employed plumbers and electricians, petty traders, small-scale farmers, poultry and other livestock keepers, truck pushers, petty tailors, dress-makers, barbers, hair-dressers, washer men and women and other persons who need financial assistance to improve their trade and economic well-being throughout the country.

Community Banks (CMB)

Provisions for the establishment of this type of banks were first made as part of the 1990 budget proposals. The federal government announced its intention to introduce the Community Banking Scheme and proceeded to dedicate funds accruing then estimated at ₦45 million from slight upward adjustment in the pump price of fuel for that purpose. It was not until the last quarter of the year, precisely on 31st December, 1990 that the President commissioned the first branch of a community bank in Kaduna State. The enabling statute was eventually put in place by the enactment of the Community Bank Decree (CBD) No. 46 of 1992.

Under section 1(1) of the decree, any community is authorized to establish a community bank for the purposes of

- a. promoting rural development through the provision of finance and banking services;
- b. enhancing the rapid development of productive activities especially in rural areas; and
- c. improving the economic status of small-scale) producers both in the rural and urban areas.

For these purposes, “a community” is defined under section 36 as “a group of people who possess a common bond arising from residence, occupation, profession or other similar attributes and who interact, fairly frequently in pursuit of economic or social goals.”

Under section 2, the National Board for Community Banks was established for the promotion, development, monitoring and general supervision of the community banks. The board is a body corporate with perpetual succession, common seal and has the capacity to sue and be sued.

Urban Development Bank of Nigeria (UDBN)

Several Nigerian towns and cities experience problems of inadequate housing and infrastructural facilities, such as transportation, electricity and water supply. In order to create a greater capacity for addressing these, the federal government promulgated Decree No. 51 of 1992 establishing the bank. It was established as a limited liability company in accordance with the provisions of the CAMD.¹⁹ Its initial capital was open to subscription by the federal government, state and local governments, the Nigerian Labour Congress (NLC) and individual Nigerians.²⁰

The object of the bank, in accordance with the object clause of its memorandum of association, is to foster the rapid development of urban infrastructures throughout the federation, through the provision of finance and banking services.²¹ The bank has power, with the approval of the Minister of Finance, to source foreign exchange of any amount from

- a. the International Bank for Reconstruction and Development (World Bank);
- b. the International Development Association (IDA);
- c. the European Development Bank and Fund (EDBF);
- d. the African Development Bank (ADB);
- e. bilateral loans and grants on government to government basis;
- f. Shelter Afrique and other donors; and
- g. other multilateral loans and donor agencies.

The bank is further empowered to manage other off-shore funds procured by the federal government for urban development in the country.

In the year 2001, there were some pragmatic policy announcements which effect changes in the structure of the development and special banks. Presently NACB and PBN have been merged to form the Nigerian Agricultural Corporation and Rural Development Bank (NACRDB). Similarly, the NIDB, NBCI and the Nigerian Economic Rehabilitation Fund (NERFUND) are being restructured to form a new Nigerian Bank of Industry (NBI).

The Central Bank

The establishment of the bank

One of the most important institutional changes in the evolution of the monetary and financial system in Nigeria is the establishment of the Central Bank of Nigeria in 1958. At that time, Nigeria's central bank was conceived as one of the hallmarks of political and financial independence. Much earlier, increased international trade along the West African coast motivated the setting up of the

¹⁹ See sec. 1 of the decree.

²⁰ See *ibid*, sec. 2.

²¹ See *ibid*, sec. 3.

Bank of British West Africa (BBWA) in 1894, which ushered in a rudimentary form of commercial Banking in a region. In 1912, the West African Currency Board (WACB) was established primarily to promote the financing of export trade. Specifically, it was charged with the issue of a West African Currency, the exchange of existing currencies, the repatriation of such currencies and the investment of reserves. The WACB was an Offshoot of the recommendation of the Emmott Committee²² set up by the then secretary of State, the Right Honourable Lewis Harcourt. The Board retained the services of the BBWA as its currency distribution agent. It also set up four currency centres in Lagos (Nigeria), Accra (Gold Coast now Ghana), Freetown (Sierra Leone) and Bathurst (Gambia). The West African currency in circulation increased steadily through the 1950s in response to the growing demand for West African primary products such as cocoa, groundnut and palm oil and the increase in the world prices of such products. The Board, however, did not have discretionary control over the money stock of the territories under its sphere of influence. It operated in Nigeria between 1912 and 1959 when it was formally abolished. During that period, the Board could not engage in monetary management, neither were Nigerians trained in the art. In order to eliminate this deficiency and promote the growth of the domestic money and capital markets, especially as the country marched towards independence in 1960, the Central Bank of Nigeria (CBN) was established by the Central Bank Act 1958, which enabled the Bank to commence business on 1st July, 1959.²³

Before the federal Government of Nigeria reached a decision to establish a central bank, three important steps were taken as feasibility studies in the years immediately preceding 1958. Mr. J.L. Fisher, an adviser to the Bank of England, was appointed towards the end of 1952 by the colonial administration. His mission was to prepare a report on the desirability and practicability of establishing a central bank of Nigeria for the promotion of the economic development of the country. Mr. Fisher's report, after a review of the operations of the Bank of England and the existing structure of the Nigerian Financial System, came to the conclusion that it would be inadvisable to contemplate the establishment of a central bank of Nigeria at the time. His reason was that conducive financial conditions did not exist for it to function effectively. The report recommended instead the transfer of the West African Currency Board to

²² For further details on the West African Currency Board, see Emmott, Lord, Report (1912), ed. 6426 (London HMSO); Loynes, J.B., *The West African Currency Board*, (1962) London.

²³ See generally on this, CBN BRIEFS, Series No. 93\ 02, by the Research Department of the CBN, especially pp.1-2

be followed subsequently by the establishment of a Nigerian bank of issue which will itself gradually develop into a full-fledged central bank.²⁴

Mr. Fisher's report did not go down well with the indigenous political elites and soon afterwards, a World Bank Mission was delegated to visit Nigeria and report on the economic development of the country. The World Bank Mission's Report, written in 1954, expressed the view that Mr. Fisher was over cautious in his report. After reviewing the economic situation in Nigeria, this later report concluded that an early establishment of a Nigerian bank of issue with limited other functions was desirable as a first step in the development of a central banking system.²⁵ It is worthy of note that the colonial administration at the time was not favourably disposed to the views expressed in the World Bank Mission.

However, in 1957, Mr. J.B. Loynes, another adviser to the Bank of England, reported on the establishment of a Nigerian Central Bank, the introduction of a Nigerian currency and other associated matters. This time around, Mr. Loynes' report was more favourable and the Central Bank Ordinances of 1958 followed closely the recommendations of or proposals in this report.²⁶ After being in operation for more than thirty years the 1958 Ordinances and its subsequent amendment and the Central Bank (Currency Conversion) Act of 1967 and its amendments were repealed by the Central Bank Decree, No. 24 of 1991. The promulgation of the new decree marked an important epoch in the history of central banking in Nigeria because of the expanded powers conferred on the bank to execute its primary functions. In achieving this, it took account the experience of the past years and the need to reposition the Bank for the challenges of a modern dynamic financial system and its future development.

Under the new decree, the Bank maintains its corporate status as a body corporate, with perpetual succession and common seal. It may sue and be sued in its own name and, except as limited by the decree, it may acquire and dispose of moveable and immovable property for the purpose of the performance of its functions under the decree.²⁷ The authorized share capital of the Bank is now 3,000,000, all of which are subscribed and held by the Federal Government.²⁸ The capital position is further re-enforced by the creation of general reserve into which should be paid all sums remaining from its incomes and other sources than

²⁴ See Fisher, J.L., Report, (1953) Lagos Government Printers.

²⁵ World Bank Report, 1954

²⁶ See Loynes, J.B., Report, (1957) Lagos Government Printers. For a review of these developments, see Twenty Years of Central Banking in Nigeria: 1959-1979, by the Research Department of the CBN, pp. 37-42.

²⁷ See sec. 1(2)(3) of the CBND, No. 24 of 1991

²⁸ See *ibid*, sec. 4(1)(2).

receipts after meeting all current expenditures.²⁹ For the purpose of further strengthening the supervisory activities of the Bank, the BOFID was also promulgated, superseding the Banking Act of 1969 and its amendments. The two decrees, the CBND and BOFID, have conferred greater powers on the CBN in the areas of bank supervision and examination, monetary management and enforcement and enforcement of prudential standards in banking. In so doing, they have aided the Bank in introducing measures aimed at promoting monetary stability and soundness of the financial system. The CBND makes the Bank subject only to the authority of the president of the Federal Republic of Nigeria and stipulates the maximum financial accommodation, in the form of Ways and Means Advances that the federal government may obtain from the Bank. The BOFID, among others, centralizes the function of licensing as well as the regulating of banks and other financial institutions in the Bank. The power of the Bank to issue “cease and desist” orders, to speed up legal action and to handle the problem of ailing banks, has been tremendously enhanced. In conclusion, the two decrees have further strengthened the powers of the Bank to coordinate and control the pace and direction of monetary and financial activities in Nigeria.

The Central Bank of Nigeria is now governed by the repealed CBN Act 1991, and all the provisions and functions are enshrined in the CBN Act, 2007 (No. 7). Summarily, the seven primary functions of the bank are:

1. Issue and distribution of Nigeria currency,
2. Management of Nigeria’s external reserve,
3. Promotion of monetary stability,
4. Promotion of sound financial structure,
5. Banker and financial adviser to government,
6. Banking supervision and examination, and
7. Developmental functions.

²⁹ See. Ibid, sec. 5(a).

Chapter 3

Development of Banking Business

Introduction

What we have today as banks and banking business, was what was bequeathed to us by the goldsmiths. Goldsmiths were the earliest businessmen that accepted money and other valuables for safe custody and as the relationship then was more of bailor-bailee, they legally did not have discretion to use money the way they thought fit.¹

However, as trade developed and with the undoubted integrity of the goldsmiths, their receipts became very popular and readily acceptable in exchange for goods and services such that people did not come forward to ask for their money. It therefore became convenient, out of pure commercial consideration, for a goldsmith to make use of monies deposited with him as if the money belonged to him without recourse to the customers. Money, deposited with goldsmith became the goldsmith's money, hence could now be lent out with interest and thus, the goldsmith business became profitable and flourishing.

It is to be noted, however, that such use of the customer's money without prior approval under the contract of bailment could constitute a criminal breach of trust and breach of the contract of bailment.²

Furthermore, banking and especially bank lending would have been frustrated, if prior approval of the depositors had to be obtained before the money deposited could be made use of. It should be noted that what we have today as modern banking evolved through the process enumerated above.

Nature and Scope of Banking Business

The nature of banking business as stated by *John M. Keynes*³ that the modern banker performs two sets of services. He supplies a substitute for state money by acting as a clearing house and transferring current payments backwards and forwards between his different customers by means of book entries on the credit and debit sides. He also acts as a middleman in a particular type of lending,

¹ L. Afolabi, *Law and Practice of Banking*, (Ibadan: Heinemann Educ. Books (Nig.) Plc.) (1990) p. 33

² *Ibid.*, at 9

³ John M. Keynes, *Treatise on Money*, (London: Macmillan), 1930. p. 2

receiving deposit from the public which he employs in purchasing securities or making loans to industry and trade, mainly to meet the demand of working capital.

*Sir John Paget*⁴ said that the four test of banking business were:

- a. The taking of deposits;
- b. The taking of current accounts;
- c. The payment of cheques;
- d. The collection of cheques.

The main legal problem which has arisen in relation to these services has been as to the measure of skill and care which can be expected of bankers in carrying them out.

On the one hand, it has been contended that they are not really part of the business of banking at all, so that a person who sets up as a banker is under no obligation to provide them, and if he does so acts in a purely voluntary capacity, accepting no obligation as to care and efficiency which he display in this work, so that apart from cases where he has acted fraudulently, or possibly with gross negligence, he cannot be held for any loss his customer may suffer as a consequence of his activity or lack of activity.

In Banker's reference or opinions, the giving of information as to financial position of their customers, which is commonly called a bank opinion is part of the everyday business of banking. In doing this, he must take due care not to furnish information which is false or misleading. Lord Haldane said in *Banbury v. Bank of Montreal*,⁵ that the only duty on the banker in such a case is that of "common honesty", which in more precise language means that he must not be fraudulent. Any misrepresentation as to the customer's financial position which has been innocently made will not be actionable as such. Another aspect of banker's services is the travel facilities provided as cheque cards, travellers cheques, circular notes, etc. The legal position of the parties to traveller's cheques is tripartite in nature.

On the relationship between the issuing banker and the traveller, Professor Ellinger⁶ says, this is the "basic" relationship in this business, if only because the whole object of the exercise is the provision by the issuer of financial facilities for the traveller of his journeys. The position is governed by a contract, the principal implied obligations in which on the part of issuing bankers have already been indicated. The traveller undertakes not to place his counter signature on the

⁴ Paget, *op. cit.* at 21

⁵ *Banbury v. Bank of Montreal* (1918) A. C. 626

⁶ (see Afolabi, *Law and Practice of Banking* HEB, 2005) p.19

instrument until such time as he negotiates to the paying agents. It is arguable also that he impliedly agrees to exercise reasonable care to keep the instrument safe. A traveller who has lost cheques, or even had them stolen from him is not unlikely to claim to have them replaced, and it is believed that issuing banks normally adopt a generous policy in such cases, but their legal obligation to do so seems doubtful.

In the position of a paying agent, any person to whom a traveller's cheque is negotiated for value and who takes it in good faith would appear to qualify as a paying agent and therefore *prima facie* entitled to be reimbursed by the issuer. If the paying agent had not obtained a good title then he would be liable in conversion for the value of the instrument to the true owner, the traveller; as well as not being able to recover what he had paid away from the issuing bankers.

The principal aspect of banker's services is to receive money from customers either on current account or deposit account and in the former case to pay cheques drawn by the customer. A banker also discounts bills and promissory notes and makes advances either by way of loan or overdraft. He undertakes agency of other foreign banks, effect purchases and sales of securities, collect cheques, dividends, coupons and foreign bills, makes periodical and other payments; pays customer's acceptances, issues draft and letters of credit, conduct foreign exchange business, accept bills for customers, takes charge of securities and other valuables for customer and remits fund to any part of the world through correspondent banks.⁷

Arising from all that we have gathered from the preceding paragraphs, it is our considered opinion therefore that though there exist a relationship between the banker and the customer, which is basically that of debtor and creditor as seen in the decisions in *Foley v. Hill*⁸ with right and obligations, in maintaining this relationship, however much is left to be desired. The implication is that the relationship is in theory than in practice as most the customers are not aware of their rights and do not know the bank owe them these obligations. This is because, most of these duties are basically implied not expressly stated. As a result of this, there exists a low appreciation of the contractual obligations on the part of the customers, as a result of which the banker most often exploit the ignorance of the customer to their advantage. Therefore, the relationship between the banker and the customer and their respective rights and obligations should be expressly stated and brought to the notice of the customer at the time of entering into the contract.

⁷ O. A. Adeniji – *The Law and Practice of Banking in Nigeria*, Ibadan: Unife Press, 1981. p. 43

⁸ (1848) 2 H.L. Cas 28; 9 ER 1002; 43-49, 247, 250

Even though, the efficiency of the relationship between the banker and customer has not been expressly stated, the literature still gives the theoretical framework in exploring the relationship between the banker and customer.

Who is a Banker?

From the historical evolution of banking enumerated above, it could be deduced that, there was no clear cut relationship between the depositor of the goldsmith's money and other valuables on the one hand and the goldsmith on the other. It was a matter of controversy and conflicting decisions were reached, as to the true description of the depositor and the goldsmith, which in contemporary times has metamorphosed into banker and customer relationship. In one of the earliest cases on this issue, it was held that, the bank was a depository of customer's money⁹. However, the above position changed not too long from when that decision was reached, when four years later in *Marzetti v. Williams*. It was held that, money deposited with the bank belonged to the customer but the plea that the moneys' deposited were for "care and custody" was rejected. This is so, because if moneys deposited were to be in "care and custody", the customer could insist on being paid with the exact notes he paid and separate spaces would have to be created for each customer in the bank's vault as customer's note could not be mixed up.

The above painted scenario could have occasioned hardship and possibly led to the frustration of the banking industry as a whole. Therefore, it became not only necessary, but imperative to be able to fathom a legally acceptable relationship that exist between the banker and his customer, which to all intent, the purpose will be mutually beneficial to the banker and the customer on the one hand and the general business community on the other.

This controversy of what truly was the real description of money deposited in the bank continued, but without hope for its resolution. Therefore, the decision that bank deposit is a debt on the bank was applied in *Devaynes v. Noble*,¹⁰ where it was held that money deposited with the bank belongs immediately to the bank and it was further added and confirmed that bank's deposits are actually "loans to the bank" in another case¹¹ and that money so deposited could be used by the bank as it pleases, but subject to repayment on demand by the customer.

Therefore having attempted a clarification on the money deposited with the bank to be loans to the bank, it behoves on us to move a step further by attempting a distinction between the custodian and owner of the money so loaned

⁹ *Hall v. Fuller* (1826) 58 & Co. 750, 180 ER 279

¹⁰ (1816) 1 mer. 529, 572.S 89

¹¹ *Sims v. Bond* (1833) 5 B & Ad. 389

and the person who loaned the money. In simple parlance therefore, we will decipher in very discernible terms who a banker is.

There is no standard definition for the word “Banking”. But a cursory look at the relevant legislation on the subject would throw sufficient light on the functional meaning of the word and those engaged in the profession which is generally referred to as ‘banker’. According to the *Bill of Exchange Act*,¹² a statute of general application in Nigeria, a ‘banker’ is defined to include a body of persons, whether incorporated or not who carry on the business of banking. According to the Act generally, the business of banking must include apart from lending, the acceptance of deposits and collection of cheques and other payments.

Heber Hart,¹³ in his book, *Law of Banking*, maintained that banker is a person or company carrying on the business of receiving monies and collecting drafts for customers subject to the obligation of honouring cheques drawn upon them from time to time by customers to the extent of the amount available on their current account. This definition is quite in tandem with that given by Sir John Paget, when he stated that “a banker” is a corporation or person, who accepts money on current account and collect cheques for customers.”¹⁴ A banker is not an employee of the bank as generally misconceived by people. This was well reflected in the case of *A.G Federation v. Ekpa*.¹⁵

Similarly, the Nigerian Banking Act of 1990 stated in section 43, that a banker is “any person who carries on banking business and includes a commercial bank, an acceptance house, discount house, financial institutions and merchant bank.” It will be glean from the above definition that, it is still very ambiguous, as the phrase banking business is vague, therefore, we need to know what banking business is that is the business of receiving monies from outside sources as deposit, irrespective of the payment of interest or the granting of money as loans and acceptance of credit, purchase of bills and cheques or the purchase and sale of securities for or the incurring of obligation to acquire claims in respect of loans prior to maturity...¹⁶ The Banking Amendment Act,¹⁷ further defined banking business as: “The business of receiving monies from outside sources as deposits, irrespective of the payment of interest and the granting of money loans and acceptance of credits or the purchase and sale of securities for account of others or the incurring of the obligations to acquire claims in respect of loans prior to their maturity or the assumption of guarantees and other warrantees for others or the

¹² Bill of Exchange Act, 1882

¹³ Hebert Hart, *Law of Banking*, 4th Ed., London: China Politics and Law University Press, 2008. p. 1

¹⁴ L. Afolabi, *op. cit.* p. 2

¹⁵ *A.G Federation v. Ekpa* (1976) 2 FNR 206.

¹⁶ Section 43, the Nigerian Banking Act, 1990

¹⁷ The Banking Amendment Act, No. 3 of 1970

affecting of transfers and clearings and such other transactions as the minister may, on the recommendation of the Central Bank order published in the *Federal Gazette*, designated as banking business.”

In the leading case of *United Dominions Trust Limited v. Kirkwood*,¹⁸ a banker was defined as one who takes money on current account, pay cheques drawn on himself and collect cheques for his customers. Accordingly, the business of banking must include apart from lending the acceptance of deposits and collection of cheques and other orders of payment.

Further, it is important to do a clarification here, which is that, a banker is not an employee of the bank as erroneously held by many till this date. From judicial decisions reached, we can authoritatively say, a banker refers to the company carrying on the business of banking and not the individual employee’s¹⁹ simpliciter. In *Stafford v. Henry*,²⁰ one Labertouche had carried on a varied business, part of which was at that time regarded as banking, but as it was not his main business, it was held, that he was not a banker. From the discourse, it can be concluded that a banker is a firm or body corporate or society whose activity is bona fide of banking and is treated generally by others as banker. A banker is not a money lender as decided in *Ojikutu v. Agbonmagbe Bank Ltd.*²¹

J. O. Anifalaye,²² maintained that although none of the textbook’s definition of banker could be said to be conclusive, they appear to be much more articulate and helpful than those of the case law and that they are sufficient for our purposes. However, in this literature the words bank and banker shall be used interchangeable as they connote the same and one thing.

The above conclusion is supported by the provisions and definitions of the word “Bank” and “Banker” in *The Evidence Act*,²³ here the word “Bank” and “Banker” are defined synonymously. Section 2(58)(1) states:

“Bank” and “Banker” means any person, persons, partnership or company carrying on the business of banking and also include any savings bank established under the Saving Bank Act, and also any banking company incorporated under any chapter heretofore or hereafter passed relating to such incorporation.”

Further, section 4(1) of the *Banking Decree*²⁴ says that, a bank means, “any person who carries on banking business, and includes commercial bank and acceptance house, discount house and financial institution.”

¹⁸ (1996) 2 QB 431

¹⁹ See the Nigerian case of *Akwule and 10 Others v. Regina* (1963) All NLR 193

²⁰ (1850), 112 Ir. Eq. R400

²¹ (1966) 2 All NLR 553

²² J. O. Anifalaye, *Law of Banking and Insurance*, Ilorin: Life Gate Publishing Co. 1979, p. 5

²³ Evidence Act, 2011

²⁴ Section 4(1) of the Banking Decree No. 1 of 1969 which has been repealed by CBN Act, No.7, 2007.

The section 2 of the *Coins Ordinance*²⁵ also defined 'banker' as any corporation carrying on the business of bankers or financial agent. Section 2 of *Banking Ordinance of 1952*,²⁶ bank means any company carrying on banking business or using the World Bank. The Ordinance was repealed and replaced by the Banking Act 1958,²⁷ was thus the definition current at law when the case of *Akwule v. R.*²⁸ was decided. Thus, in *Akwule and 10 Others v. Regina*,²⁹ the word "banker" refers to the company carrying on banking business and not the individual employees who work in the bank.

Akwule was a Branch Manager of the Bank of West Africa and had a lending power of £200. He granted overdraft in excess of this amount to the other defendants some of whom were bad debtors of the bank and had, for that reason been black-listed for credit and these facts were known to Akwule. He did not declare these lendings to his control office but false returns were made to balance the books. Akwule was charged and convicted for criminal breach of trust and the others for aiding and abetting him. They appealed to the Supreme Court and in deciding the criminal appeal a question to be decided was whether Akwule was in fact "a banker"?

The Court decided that he was not and in the words of the Chief Justice of the Federation, Sir Adetokunbo Ademola, CFJ (as he then was) are worthy of note.

"The word 'banker' does not, in our view, include a person who is a mere employee of a bank. The relationship between a banker and a customer is that of debtor and creditor in respect of the money deposited with the banker by the customer".³⁰

It thus becomes judicially established that the word banker refers to a company licensed to carry on banking business and not to an employee or director or shareholder of the bank and this is in line with literary usage.

Section 2 of *Bill of Exchange Ordinance*³¹ defined a banker thus; "Banker includes a body of persons whether incorporated or not who carry on the business of banking."

Today incorporation is germane to the status of a banker as no company can transact banking business in Nigeria without being duly incorporated and is licensed to do so.³²

²⁵ Coins Ordinance, No. 6 of 1928

²⁶ Banking Ordinance, No. 15 of 1952 repealed by CBN Act, 2007

²⁷ Banking Act 1958 was repealed and replaced with CBN Act, 2007.

²⁸ (1963) All NLR 193; (1963) 5 NSCC 157

²⁹ *Supra*

³⁰ At page 29

³¹ Bill of Exchange Act LFN, 2004

In summary, for the purpose of the law of banking, the terms ‘bank’ and ‘banker’ are frequently used interchangeably. Neither the CBN Act nor the BOFIA used or defined the term ‘banker’ but ordinarily, the term is commonly employed to signify that the person being referred to is an individual rather than an incorporated company for which the term ‘bank’ is more appropriately used. For example the CIBN Act defines a “banker” as any person employed by a bank or whose duty wholly or substantially includes banking business. This invariably distinguishes between a bank and a banker, the one referring to an institution and an employer while the other an employee.

It is pertinent to point out here that an individual or a natural person is prohibited under section 2(1) of the BOFIA from carrying on the business of banking. Consequently, an individual or a natural person is prohibited under S.2(1) of the BOFIA from carrying on the business of banking. Consequently, an individual or a natural person cannot as such carry on banking business except as an employee of a bank licensed to carry on such business.

Statutory Definition of “Bank”

No statutory enactment has ever stated precisely what a bank is. Existing statutes merely describes or explains the term but only for its limited purpose.

This for example, S.1 of the Bills of Exchange Act, 1990³³ describes a “bank” as including a body of persons, whether incorporated or not, who carry on the business of banking. This definition is wholly unsatisfactory because the Act in the first place does not elucidate the meaning of “banking business” but merely assumes it. Secondly, the use of the word “include” does not render the description definite for it suggests that there may be a bank or banker who does not carry on banking business. Thirdly, the use of the expression “whether incorporated or not” has been rendered otiose in view of the fact that successive banking legislative enactments have consistently maintained that only an incorporated company can legally carry on such business in Nigeria.

Similarly, Section 258(1) of the Evidence Act³⁴ defines the terms, *inter alia*, as “any person, persons, partnership or company carrying on the business of banker...” this definition contains the same or similar inadequacies as the previous one and therefore suffers the same fate.

The BOFIA in Section 61 merely states that the term means a bank licensed under the Act which is not at all useful.

³² BOFIA Cap B3 LFN, 2004

³³ Now LFN, 2004

³⁴ Evidence Act, 2011

Judicial Definition of “Bank”

From the point of view of the Courts and Judges, the issue has become whether an institution to be classified as a “bank” need necessarily be engaged in all the above facts of banking business.

It has undoubtedly become obvious from modern banking practice that not every bank engages in the same type of banking business. Depending on the policy focus of the bank, some specialize in some, while other specialized in others.

It becomes necessary therefore to attempt to extract the functions or services that can be regarded as the lowest common denomination for all banks. These may be taken as those without which an institution can hardly be regarded as a “bank” or engaged in “banking business”.

Who is a Customer?

The above question from a glance will look simple especially to the lay people; however, this might not necessarily be so as a customer of the bank is certainly different from the perception of who a customer is in ordinary usage. Thus, a bank’s customer is not a person who transacts business on the counter. No statutory attempt has been made to define who is a customer of a bank and the question has been left to judicial interpretation or case law. It has been held that, for a person to be considered as a customer of a bank, it is essential and indispensable that the person should have opened an account with the bank.³⁵ This is in line with the decision held in *Great Western Railway Co. v. London County Banking Co. Ltd.*³⁶ It was stated citing section 82 of the Bill of Exchange Act 1882, now replaced in England by section 4 of the Cheques Act, 1964 which defines a customer as any person whether incorporated or not, who has some sort of account with a banker.

In *Great Western Railway Company v. London and County Banking Co.*³⁷ it was held that a person who for about twenty years had been cashing a bank’s cheque payable to him over the counter without opening an account with the bank is not a customer of the bank. *Lord Davey* pointed out that “there must be some sort of account, either a deposit or current or some similar relationship to make a person a customer of a bank”. (Playing the good Samaritan’s role towards another person by exchanging for the letter, crossed cheques for cash on several occasions, would not constitute that other person a customer).

³⁵ The Nature and Legal Effect of Banking Contract in Nigeria (Calabar Law Journal, vol.16, 2013-15 p.323

³⁶ (1901) AC 401

³⁷ *Supra*

In *Ladbroke & Co. v. Todd*³⁸ it established that the duration of the banker-customer relationship is not relevant. The fairest transaction on the account makes the account holder a customer.

In *Woods v. Martins Bank Ltd.*³⁹ negotiations have been completed between the plaintiff and the defendant bank from which it could be inferred that the plaintiff would open an account, (which he did subsequently), and that the defendant bank was willing to allow him to do so. However, before the account was actually opened, the defendant bank accepted an instruction from the plaintiff to collect money from a third party on his behalf, to pay part of the proceeds to a fourth party and “to retain to my order the balance”.

It was held that the plaintiff was the defendant bank’s customer and that a person becomes a customer as soon as arrangements for opening an account are completed and that whether a deposit has actually been made is immaterial.

Speaking on the meaning of a “Customer”, the Judicial Committee of the Privy Council said in the case of *Commissioners for Taxation v. English Scottish and Australian Bank*⁴⁰ that; “...the word “customer” signifies a relationship in which duration is not of the essence. A person whose money has been accepted by the bank on the footing that they undertake to honour cheques up to the amount standing to his credit is, in the view of our Lordships”, a customer of the bank in the sense of the statute, irrespective of whether his connection is of short or long standing.

The contrast is not between habitual and a new comer, but between a person for whom the bank performs a casual service, such as, for instance, cashing a cheque for a person introduced by one of their customers, and a person who has an account of his own at the bank.

Therefore, the fact that a banker habitually performs a casual service for a person, for examples cashes over the counter cheques obtained by that person from third parties does not render that person a customer. Duration is therefore, not of the essence in the relationship between a banker and a customer. The relationship between a banker and a customer comes into existence only if both parties have an intention that it be established.

Therefore, in this context, it has been held that a person is a customer either when the banker opens an account in his name or when the banker accepts a deposit to be credited to it. Speaking on the meaning of a “customer” the Judicial Committee of the Privy Council said in the case of *Commissioners of Taxation v. English Scottish and Australian Bank*, that a customer of a bank is one who has an

³⁸ (1914) 30 T.L. P 433

³⁹ (1959) 1 QB 55; 39, 70, 71

⁴⁰ (1920) AC 682

account with the bank; but the relationship is not one of which duration is the essence.⁴¹

Thus, a bank's customer is not a person who transacts business on the counter such as cashing cheques or paying cheque;⁴² playing the good Samaritan's role towards another person by exchanging for the latter cross-cheque for cash on several occasion will not constitute that other person a customer; this is in line with the decision held in *Ladbroke & Co. Ltd. v. Todd*,⁴³ where it has held that the duration of banker customer relationship is not relevant. Therefore, a customer of the bank must have an account with the bank, he must have something credited or debited in any book or paper kept by the bank.

Hence in *Woods v. Martins Bank Ltd.*,⁴⁴ it was held that a person who gave instructions to a bank to collect monies for him from a building society, invest part thereof and retain the remainder for him is a customer. It follows that as already remarked – once there is an unequivocal intention to open and operate an account, the person dealing with the bank can be regarded as a customer of the very bank.

Also, in *Ademiluyi and Lamuye v. African Continental Bank Ltd.*⁴⁵ the Plaintiffs, the officials of the then National Council for Nigeria and Cameroon (N.C.N.C) political party, opened an account in their joint names with the defendant bank in November 1963, with the sum of £23,720. They subsequently paid £25,000 into the same account. The defendant believed that the plaintiff held the account in trust for the N.C.N.C who also thought that there was an account in its name with the defendant/bank. The N.C.N.C paid in a cheque for the sum of £500 endorsed to it and was credited to the plaintiff's joint account. The amount standing in the said joint account was £54,584 and the plaintiffs issued a cheque in that sum. The N.C.N.C directed the defendants to freeze the account and the cheque issued by the plaintiffs was returned unpaid by the defendants who marked it "payment countermanded". It was held that notwithstanding any collateral agreements between the plaintiffs and the N.C.N.C, the plaintiffs are the customers of the defendant since it is their names alone which appeared in the defendant's books.

Furthermore, that it is not open of a banker to justify refusal to obey its customer's mandate by relying on third parties right, and thus cannot plead *Jus Tertii*. It was finally held that the defendant was liable in the instant case since the

⁴¹ *Supra*

⁴² *Great Western Railway Corporation v. London Country Banking Co. Ltd.* (1901) AC. 414

⁴³ 1914) 30 TLP 433

⁴⁴ (1958) 1 QB 55, 39, 70, 71 AC.

⁴⁵ (1964) A.L.R Comm 10.

£54,584 demanded by the plaintiffs included the sum of £500 belonging to the N.C.N.C and therefore there was the amount of £54,584 belonging to the plaintiffs at the date when the cheque was issued.

In conclusion therefore, for a person to be regarded as a customer, there must be some sort of account either a deposit or current or some similar relationship.

The Nature of Banker and Customer Relationship

The nature of banker and customer relationship is essentially contractual, but fundamentally, it is that of a debtor (the banker) and creditor (the customer) with the roles sometimes reversed. This was seen in the decisions in *Foley v. Hill*⁴⁶ and that of *Joachimson v. Swiss Bank Corporation*⁴⁷ respectively. The House of Lords submitted thus – “that the relationship between the banker and the customer is that of debtor and creditor, but one of the terms of the implied contract is that money lend to the banker is not payable except on demand” very unlike the ordinary debtor-creditor relationship. To appreciate the nature of this relationship, it will be necessary and needful to examine the facts of the case⁴⁸. The plaintiff had sought to compel the bank to render account of profit in lieu of money deposited with the defendant bank on the contention that, the bank was an agent and thus the duties of a fiduciary nature subsists. This was however, contrasted by the judgment of Lord Cottenham L. C. which for the very insightful reasoning, we will quote verbatim:

“Money, when paid into a bank, ceases altogether to be the money of the principal, it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. It is then the banker’s money; he is known to deal with it as his own: he makes what profit of it he can, which profit he retains to himself paying back only the principal.”

It also partakes of many aspect of the relationship of agent and principal, with the added obligations on the part of the banker to honour the customer’s cheques if the account is in credit.⁴⁹

The relationship is governed by:

- (i) the general rules of contract;

⁴⁶ (1884) 2 H. L. Cas. 28. 9 ER. 1002

⁴⁷ (1921) 3 KB 110

⁴⁸ *Supra*

⁴⁹ *London Joint Stock Bank Ltd. v. Macmillan & Arthur* (1981) AC. 977

- (ii) the rules of agency, in circumstances where the banker acts as agent for his customer in collecting or paying cheque on his behalf;
- (iii) the rules of bailor and bailee, where a banker retains his customer's deeds and documents for safe-keeping;
- (iv) various rules of banking practice evolved over several centuries, largely recognized and enforced by the courts. Deposit of goods for safe custody is an example of an important type of contract or quasi-contract called bailment. Money is not ordinarily the subject matter of bailment but may be so, if the actual coins delivered are to be returned.

A bailment relationship would have nipped the incipient business of banking in the bud. On the same line, to have held that the banker was a trustee of the money's deposited with him would have killed the business of banking as we know it as effectively as to have held that he was a bailee. A trustee is usually severely restricted in the use to which he may put trust funds and may be confined to investments in a limited class of securities; a banker could not have been a trustee, and retains complete freedom as to the use of the money in commerce.

As agent is in many respects in the position of a trustee, it is true that it would have been possible to treat the banker as an agent to use his principal's money at his discretion, but the difficulties as to the remuneration and accounting under agency law would have been a grave obstacle to the development of a flexible banking system. Yet this positive view was strenuously argued for as late as 1848 in the famous case of *Foley v. Hill* but was vehemently rejected.

This does not mean that a banker does not from time to time act as his customer's agent: thus he collects from him bills of exchange and cheques of which he is the holder, often put through stock exchange business for him and acts on his behalf in other ways. In such cases, he is certainly under the obligations of an agent, and it seems unnecessary at the present time to regard *Foley v. Hill* as having established some sort of presumption that is a bank cannot in appropriate circumstance be regarded as his customer's agent.

Although it would not appear to arise from agency, but to be implicit in the banker-customer relationship, the duty of the banker to treat his customer's affair as strictly confidential is similar to the duty of good faith which the agent owes to his principal.

Thus, in *Tournier v. National Provincial Bank*,⁵⁰ it was held that the banker is under a contractual duty of secrecy implied in the relationship of banker and customer, the confidential relationship between the parties is very remarkable in

⁵⁰ *Tournier v. National Provincial Bank* (1924) I. K. B. 461 C. & S. 9

respect at any rate of all transactions that go through the account, and to the securities, if any, given in respect of the account.

The legal basis on which a full and necessary control of the depositor's money could best be obtained was that of debtor and creditor, i.e. to regard the banker as himself having borrowed money from the depositor, his customer.

Is Banking a Trade or a Profession?

In *Regina v. Industrial Disputes Tribunal* ⁵¹ Lord Goddard concluded that banking is ordinarily speaking a trade because bankers refer to those who patronize them as “customers” and not “clients” as it is usually employed by professionals.

Banking business is no doubt a trade not only because they employ the word ‘customer’ but also because of the buying and selling involved in banking which is central to all trading activities whether the objects of trade be goods, services or combination of both.

As an occupation, banking is a profession because it has its own distinct body of knowledge which distinguishes it from other aspect of human endeavour. For example, most people will appreciate that any skill acquired in the area of deposit keeping, lending and foreign exchange transactions are in the area of banking.

This body of knowledge has been developed over time and will continue to adapt itself to modifications as may be necessary based on the changing circumstances and realities of different periods.

The assimilation and mastery of this knowledge require time and dedication and any person who has acquired the requisite standard, judged by success in relevant examinations and experience or any other approved, method of assessment will be issued with a certificate which authenticates the holder as a professional in banking and also imposes on him, a set of professional codes and ethical standards.

However, like all others, the banking profession requires due appreciation of supportive disciplines like accountancy, law, economics and quantitative technologies.

In effect, the business of banking is a trade involving mainly the buying and selling of services and the main input of which is the professionalism of its human resources. Banking is therefore a trade and a profession.

⁵¹ (1954)

Chapter 4

Laws Regulating the Establishment and Operation of Banks in Nigeria

Introduction

The banking industry in Nigeria which started as far back as 1862, though with neither Nigerian nor foreign legislation, became well established and duly regulated by series of legislation. The business of banking therefore started as a lawless and non-regulated business and glides to a highly sophisticated and duly regulated one, taking into cognizance the importance of the business of banking in Nigerian economy and the series of corporate malpractices and financial scam in the then banking institutions, the first banking legislation in Nigeria, the 1952 banking ordinance was passed into law. By 1958, another banking ordinance was passed, section 25 of which repealed the 1952 Act. Subsequent banking legislation - 1958 CBN Act, 1968 Banking Act, 1990 Banking Act, The BOFI ACT of 1991, the CBN Act, 1991, CAMA 1991 and the recent 2007 CBN Act - prescribe for rules, regulations and principles which any corporate person willing to partake in banking business must observe before it is authorized to do so. These legislation equally impose certain duties and obligations on licensed banks and equally put in place series of rules and conventions empowering the Central Bank and other bodies like the Federal Ministry of Finance to supervise and control banking institutions so as to ensure smooth running of the business, avoid all the problems experienced by banking institutions prior to 1952 and to safeguard members of the public from losing their funds.

The banking sector being a conspicuous and significant partner in every nation's economy, need to be regulated for its stability, reliability, confidence and above all tranquillity. The fundamental question that disturbs one's mind is how and to what extent does these various legislation guarantee safety in banking business and to what extent does these legislation achieve their aims and philosophical objectives. It may be concluded that to a larger extent, these legislation enhance and promote the conduct of banking business in all respects in Nigeria.

Banking Legislation and their Utilities

Banks, the world over, play critical role as catalyst of national-economic growth and development. Banks not only provide the required financial services to private sector of the economy, they also contribute important source of government funding for economic development projects.

It is in realization of the critical role of banks in the healthy growth and development of the economy that various governments have shown keen interest in the banking sector by establishing regulatory framework and institutions to monitor and control banking operations. There is the need to ensure safety, soundness and efficiency of the financial services industry.

Generally, the aim or objectives of bank legislations is to make provisions for the registration, licensing, supervision and control of the banking business as it is evident in the various banking statutes. These objectives can be summarized as follows:

- (a) to provide safety for bank depositors;
- (b) to ensure government control of the activities of the banks;
- (c) to provide highly competitive financial market;
- (d) to build up and ensure confidence in the activities of the bank;
- (e) to present the liquidity and ensure sovereignty of the banks;
- (f) to regulate and limit the risks taken by banks in their operations.

Central Bank of Nigeria Act, 2007

Section 1 of this Act state that there is established for Nigeria a body known as the Central Bank of Nigeria.¹

The principal objectives as stated in section 2 shall be:

- (a) ensure monetary and price stability;
- (b) issue legal tender currency in Nigeria;
- (c) maintain external reserves to safeguard the international value of the legal tender currency;
- (d) promote a sound financial system in Nigeria; and
- (e) act as banker and provide economic and financial advice to the federal government.²

According to the provisions of section 4(1), the authorized capital of the bank shall be one hundred million naira only.³

By the provision of section 6(1) of the Act, there shall be for the bank a board of directors which shall be responsible for the policy and general

¹ Section 1 of CBN Act, 2007

² Section 2 of CBN Act, 2007

³ section 4 of CBN Act, 2007

administration of the bank. The board shall consist of Governor who shall be the chairman; four deputy governors; the permanent secretary, financial secretary; five directors; federal ministry of finance; accountant general of the federation.⁴

Section 30 provides for powers of the bank which include:

- (a) to carry out open market operations of maintaining monetary stability in the economy of the country, and without prejudice to the generality of the foregoing, the Bank may also for that purpose issue, place, sell, repurchase, amortize or redeem securities (which shall constitute its obligations) and the securities shall be issued at such rate of interest and under such conditions of maturity, amortization, negotiability and redemption as the bank may deem appropriate;
- (b) To issue other forms of securities including treasury bills as it may deem necessary for purpose of liquidity management;
- (c) To sell or place by allocation to each bank any securities issued under paragraph (a) or (b) of this section; and
- (d) To repurchase, amortize or redeem in such manner as the Bank may deem appropriate, any such securities.

The bank may subscribe to, hold and sell shares of any corporation or company or debenture thereof set up with approval of the authority of the federal government for the purpose of promoting the development of money or capital market in Nigeria or of stimulating financial or economic development of shares.⁵

The CBN shall act as a banker to other banks in Nigeria and may also provide banking services to banks outside Nigeria.⁶

Section 42(1) provides that, the bank shall wherever necessary seek the co-operation of and co-operate with other banks in Nigeria to:

- (a) promote and maintain adequate and reasonable financial service to the public;
- (b) ensure high standards of conduct and management throughout the banking system; and
- (c) further such policies not inconsistent with this Act as shall in the opinion of the bank be in the national interest.

Also, section 42(2), notwithstanding the provisions of sections 29(1) (c) and 34 (d) of this Act, the Bank may grant loans and other accommodation facilities at such rate of interest and on such terms as the Bank may determine to any bank which may be having liquidity problems.⁷

⁴ Section 6 of CBN Act, 2007

⁵ Section 31 of CBN Act, 2007

⁶ Section 41 of CBN Act, 2007

⁷ Section 42 of CBN Act, 2007

As provided in section 45(1), the bank may, from time to time, issue directives by circular requiring each bank to:

- (a) maintain at all times in the form of cash reserves with the bank, at its office, a sum equal to a prescribed ratio of the bank; and
- (b) hold a minimum amount of specified liquid assets which shall be expressed as a ratio of deposit liabilities of the bank; and
- (c) maintain as special deposits with the Bank as its Head Office a percentage of the bank's deposit liabilities or a percentage of an increase or the absolute increase in such deposit liabilities over an amount outstanding on a date, and for a period as shall be specified by the Bank.

Section 45(6) provides that; the bank shall have power to prohibit any bank which fails to comply with any directive issued under this section, from extending new loans and advances and from undertaking new investments, until the bank complies with the directive to the satisfaction of the Bank; and may, in addition, levy fine as appropriate under the provisions of section 13(5) of the Banks and Other Financial Institutions Act.⁸

Also, in section 45(7), a bank which furnishes false information to the bank for any purpose under this section is guilty of an offence and is liable on conviction to a fine not less than ₦10,000,000 but not exceeding ₦20,000,000.⁹

Banks and Other Financial Institutions Act (BOFIA) 2004

Functions, Powers and Duties of the Central Bank of Nigeria

- i. The Central Bank of Nigeria (hereafter in this Act referred to as “The Bank”) shall have all the functions and powers conferred and the duties imposed on it under this Act, subject to the overall supervision of the ministry.
- ii. The bank shall in addition to the function and powers conferred on it by this Act, have the functions and powers conferred and the duties imposed on the Bank by the Central Bank of Nigeria Act.
- iii. The bank may authorize or instruct any officer or employee of the bank to perform any of the functions, exercise any powers or discharge any of its duties under this Act.
- iv. The bank may either generally or in any particular case, appoint any person who is not an officer or employee of the bank, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties under this Act, or to exercise, perform or discharge the functions and duties on behalf of and in the name of the bank.

⁸ Cap B3 Laws of the Federation of Nigeria, 2004

⁹ Section 45 of CBN Act, 2007

- v. For the purposes of this Act, a person shall be deemed to be receiving money as deposits;
 - a. If the person accepts deposit from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit;
 - b) Notwithstanding that it receives money as deposits which are limited to fixed amounts or certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable.
- vi. Notwithstanding anything contained in this section to the contrary, the receiving of monies against any issue of shared and debentures offered to the public in accordance with any enactment in force within the federation shall not be deemed to constitute receiving monies as deposits for the purposes of this Act.¹⁰

Banking Business

- 1. No person shall carry on any banking business in Nigeria except if it is a company duly incorporated in Nigeria and holds a valid banking licence issued under the Act.
- 2. Any person who transacts banking business without a valid licence under this Act is guilty of an offence and liable on conviction to imprisonment for a term not exceeding ten years or a fine of two million naira or both such imprisonment and fine.¹¹

Application for Grant of Licence

- 1. Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor for the grant of a licence and shall accompany the application with the following:
 - i. A feasibility report of the proposed bank;
 - ii. A draft copy of the memorandum and articles of association of the proposed bank;
 - iii. A list of the shared holders, directors and principal officers of the proposed bank and their particulars;
 - iv. The prescribed application fee; and

¹⁰ Section 1 of BOFI Act, 2004

¹¹ Section 2 of BOFI Act, 2004

- v. Such other information, documents and report as the Bank may, from time to time, specify.
2. After the applicant has provided all such information, documents and report as the Bank may require under subsection (1) of this section, the shareholders of the proposed bank shall deposit with the bank a sum equal to the minimum paid-up share capital that may be applicable under section 9 of this Act.
3. Upon the payment of the sum referred to in subsection (2) of this section, the Governor may issue a licence with or without conditions or refuse to issue a licence and the Governor need not give any reasons for the refusal.
4. Where an application for a licence is granted, the Bank shall give written notice of that fact to the applicant and the licence fee shall be paid.
5. An application for a licence shall be forwarded to the Governor and all licences to be issued shall be with the prior approval of the Minister.¹²

Investment and Release of Prescribed Minimum Paid-up Share Capital

The bank may invest any amount deposited with it pursuant to section 3(2) of this Act in treasury bills or such other securities until such a time as the Governor shall decide whether or not to grant a licence and where the licence is not granted, the Bank shall repay the sum deposit to the applicant, together with the investment income after deducting administrative expenses and tax on the income.¹³

Power to Revoke or vary Condition of Licence

1. By the provision of section 5(1) of BOFIA, Act, the Bank may vary or revoke any condition subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.
2. Where the grant of licence is subject to conditions, the bank shall comply with those conditions to the satisfaction of the bank within such period as the bank may deem appropriate in the circumstance.
3. Any bank that fails to comply with any of the conditions of its licence is guilty of an offence under this section and shall be liable on conviction to a fine not exceeding four hundred and fifty thousand naira for each day during which the condition is not complied with.¹⁴

Opening and Closing of Branches

1. By the provision of section 6(1), no Bank may open or close any branch office anywhere within or outside Nigeria except with the prior consent in writing of the bank.

¹² Section 3 of BOFI Act, 2007

¹³ Section 4 of BOFI Act, 2007

¹⁴ Section 5 of BOFI Act, 2004

2. Any Bank which contravenes the provision of subsection (1) of this section is guilty of an offence and liable to a fine not exceeding two thousand naira and the closure in case of the opening of a branch office and reopening in the case of closure of a branch office and in addition with a fine of hundred thousand naira for each day during which the offence will continue.¹⁵

Revocation of Licence

By the provision of section 12, the Governor may with the approval of board of directors and by notice published in *Gazette*, revoke any licence granted under this Act if a bank;

- a. Ceases to carry on in Nigeria the type of banking business for which the licence was issued for any continuous period of six months or any period aggregating six months during a continuous period of twelve months;
- b. Goes into liquidation or is wound up or otherwise dissolved;
- c. Fail to fulfil or comply with any condition subject to which the licence was granted;
- d. Has insufficient asset to meet its liabilities.¹⁶

According to the provisions of section 19(1), no Bank shall employ or continue the employment of any person who is or at any time has been adjudged bankrupt or has suspended payment to or has compounded in his creditors or who is or has been convicted by a court for an offence involving fraud or dishonesty or professional misconduct. Sub-section 2 states that except with the approval of the bank no bank shall have as a director any person who is a director of any other Bank.¹⁷

Asset Management Corporation of Nigeria (AMCON) Act 2010

The steady growth of non-performing loans in the Nigerian banking system, with the attendant consequences on liquidity and solvency as well as the need to take proactive measures to facilitate the implementation of the restructuring of the banking sector is what necessitated the enactment of the Asset Management Corporation of Nigeria Act, 2010 as an important element of distress resolutions under President Goodluck Jonathan's administration.

AMCON was established to basically stimulate the recovering of the financial system from crisis by boosting the liquidity of troubled banks through buying their non-performing loans and, help in the recapitalization of banks.

¹⁵ Section 6 of BOFI Act, 2004

¹⁶ Section 12 of BOFIA, 2004

¹⁷ Section 19 of BOFIA, 2004

Establishment of the Corporation (AMCON)

Section 1(1) of the AMCON Act 2010 provides as follows:

1. There is established the Asset Management Corporation of Nigeria (in this Act referred to as the Corporation).
2. The corporation shall be a body corporate with a common seal, perpetual succession and may sue and be sued in its corporate name.
3. Subject to the limitation contained in this Act, the corporation may acquire, hold and dispose of movable and immovable property for the purpose of its functions and object.¹⁸

Functions of the Corporation (AMCON)

Section 5 of the Act provides for the functions of the corporation as follows:

- a. Acquired eligible bank's assets from eligible financial institutions in accordance with the provisions of this Act.
- b. Purchase or otherwise invest in eligible equities on such terms and conditions as the corporation, with the approval of the board of the Central Bank of Nigeria.
- c. Pay coupons and redeem at maturity, bonds and debt securities issues by the corporation as consideration for the acquisition of eligible bank assets in accordance with the provisions of this Act.
- d. Hold, manage, realize and depose of eligible bank assets (including the collection of interest, principle and capital dues and taking over of collateral, securing such assets) in accordance with the provisions of this Act.¹⁹

Constraints of AMCON

The following are the major constraints faced by the Assets Management Corporation of Nigeria:

1. Central Bank to supervise and regulate the corporation. By the provision of section 58 of the Act, the CBN shall have power to supervise and regulate the activities of the corporation and may in this regard appoint examiner and any other person to carry out special or routine examination of the books and affairs of the corporation.
2. Exemptions of the corporation from capital grant. Section 60 of the Act expressly exempts the corporation from the provision of the Capital Gain Tax Act or such other laws of the National Assembly on capital gains, the Company Income Tax Act and Stamp Duties Act.

¹⁸ Section 1 of AMCON Act, 2010

¹⁹ Section 5 of AMCON Act, 2010

3. An overlapping between the objectives of the corporation as set out in section 4 and the objectives of CBN expanded discounted window (as rolled out by former CBN Governor – Charles Soludo in 2007 and maintained by Sanusi’s team) such an overlap has a tendency of creating differences in price and unintended arbitraging opportunities for banks.

Nigerian Deposit Insurance Corporation Act (NDIC) 1997

The Nigeria Deposits Insurance Corporation was enacted for the purposes of insuring all deposits liabilities of licence banks and other financial institutions.

Establishment of the NDIC

The Nigerian Deposit Insurance Corporation was established on the 15th of June, 1988 to strengthen the safety net for the newly liberated banking sector, following the recommendations of the then CBN Governor, Ola Vincent.

Section 1 of the NDIC Act provides as follows:²⁰ That there is hereby established a body to be known as the Nigerian Deposit Insurance Corporation (in this Act referred to as the Corporation).

Organization of NDIC

The NDIC is a parastatal under the Federal Ministry of Finance. The Corporation is charged with the responsibility of protecting the banking system from instability occasioned by runs and loss of depositors. The NDIC is a member of the Financial Reporting Council of Nigeria. It complements the regulatory and supervisory role of the CBN, although it report to the Federal Ministry of Finance.

Section 2 provides for Functions of the Corporation which includes:

- (a) insuring all deposit liabilities of licensed banks and such other deposit-taking financial institutions (hereinafter referred to as “insured institutions”) operating in Nigeria within the meaning of sections 16 and 20 of this Act so as to engender confidence in the Nigerian banking system;
- (b) giving assistance to insured institutions in the interest of depositors, in case of imminent or actual financial difficulties particularly where suspension of payment is threatened to avoid damage to public confidence in the banking system;
- (c) guaranteeing payments to depositors, in case of imminent or actual suspension of payments by insured institutions up to the maximum amount as provided for in section 20 of this Act;

²⁰ Section 1 of NDIC, 1997

- (d) assisting monetary authorities in the formulation and implementation of banking policy so as to ensure sound banking practice and fair competition among insured institutions in the country; and
- (e) pursuing any other measure necessary to achieve the functions of the corporation provided such measures and actions are not repugnant to the objects of the corporation.

Board of Directors

1. The governing body of the Corporation shall be a body of directors (in this Act refers to as the Board).
2. The Board shall consist of the following, members who shall be appointed by the President;
 - a. The chairman
 - b. The managing director
 - c. Two executive directors
 - d. A representative of;
 - i. The CBN not below the rank of a director
 - ii. The federal ministry of finance not below the rank of a director
 - e. Six other members. One from each of the six geo-political zones of the country.
3. The chairman and member of the board referred to in paragraph F of subsection 3 shall be part-time members.²¹

The Powers of the Board according to the provision of section 7(h) and (j) includes; to advise the Central Bank of Nigeria on the Need to Close a failed insured institution if in the opinion of the Board its continued operation will jeopardize the interests of depositors; to assume, with the prior concurrence of the Central Bank of Nigeria, the management of a failing insured institution.²²

Participation Institutions

All licensed banks and such other financial institutions in Nigeria engaged in the business of receiving deposits shall be required to insure their deposit liabilities with the Corporation.

- (1) Any licensed bank or such other deposit-taking financial institution which contravenes the liability to a maximum fine of ₦500,000.00 for each day the offence is committed.

²¹ Section 5 of NDIC Act, 1997

²² Section 7 of NDIC Act, 1997

- (2) All principal officers of such licensed bank or deposit taking financial institution which contravenes subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment for 3 years or a fine of not more than ₦5,000,000.00 (five million naira) or to both such fine and imprisonment.²³

Financial Assistance

Pursuant to section 37 of this Act, the Corporation shall, at the request of an insured institution and under such conditions as may be specified by the corporation, assist the insured institution if it:

- (a) has difficulty in meeting its obligations to its depositors and other creditors;
- (b) persistently suffers liquidity deficiency; or
- (c) has accumulated losses which have nearly or completely eroded the shareholders' fund.

- (1) The corporation may take one or a combination of any of the following actions to assist a failing insured institution:

- (a) Grant loans on such terms as may be agreed upon by the corporation and the failing insured institution;
- (b) Give guarantee for a loan taken by the insured institution;
- (c) Accept an accommodation bill with interest for a period not exceeding 90 days' maturity exclusive of days of grace and subject to renewals of not more than seven times.²⁴

Section 38 provides for Management and Restructuring of failing insured institutions. According to the provisions of section 38 (1):

- (1) The corporation, in consultation with the Central Bank of Nigeria, may-
- (a) Take over the management of the failing insured institution until its financial position has substantially improved;
 - (b) Direct specific changes to be made in the management of the failing insured institution within such time as the Corporation may specify;
 - (c) Arrange a merger with or acquisition by another insured institution or contract to have the deposit liabilities assumed by another insured institution; in which case-
 - (i) the receiving or acquiring insured institution shall assume all the recorded deposit liabilities of the failing insured institution;

²³ Section 15 of NDIC Act, 1997

²⁴ Section 37 of NDIC Act, 1997

- (ii) The receiving insured institution shall receive those assets of the failing insured institution that are acceptable and not amount equal to the difference between the assumed deposit liabilities and acceptable assets shall be advanced to the receiving insured institution by the corporation.
- (iii) The corporation may receive such assets (including land) of the failing insured institution shall be transferred or be vested in the receiving insured institution or the corporation;
- (d) Acquire, manage and dispose of impaired assets of a failing insured institutions, either directly or through an Assets Management Company and the Board of the failing insured institution shall be obliged to offer the assets of the failing insured institution for sale to the corporation or the Assets Management Company or as security for loans from the corporation or the Assets Management Company; or
- (e) Take such other measures that are reasonably necessary for the purpose of securing and restructuring the failing insured institution.²⁵

Section 40 of the Act provides for Power of the Corporation to act as liquidator. According to section 40 (1);

1. Whenever the licence of an insured institution is revoked by the Central Bank of Nigeria, the Corporation shall act as a liquidator of such failed insured institution with powers conferred on a liquidator under the Companies and Allied Matters Act, 1990²⁶ and shall be deemed to have been appointed a provisional liquidator by the Federal High Court for the purpose of that Act.²⁷

Constraints of NDIC

The following are some of the constraints of the NDIC:

1. Sometimes, the laws made by the NDIC regulates the operation of financial institutions are poorly and not judiciously implemented.
2. The laws are rendered dormant and ineffective due largely to indiscipline on the part of those responsible for their enforcement.
3. Over depending on the directives of CBN and the Minister of Finance in its operation and directive, i.e. NDIC lack of independence or its inability to function on its own.
4. Government abrogation of tribunals to try matters affecting banks and malpractices in the financial section speedily.
5. It can be terminated by an Act of the National Assembly that made it since it has no constitutional backing.

²⁵ Section 38 of NDIC Act, 1997

²⁶ Now christened Cap C20 Laws of the Federation of Nigeria, 2004

²⁷ Section 40 of NDIC Act, 1997

6. Disagreement between financial institutions and regulatory bodies.
7. Lack of corporate governance performance on the part of the regulatory and supervisory agencies.

Dishonoured Cheques (Offences) Act, 1977

Section 1(1) of this Act provides for the following:

- (1) Any person who-
 - (a) Obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or
 - (b) Obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall –
 - (i) In the case of an individual be sentence to imprisonment for two years, without the option of a fine; and
 - (ii) In the case of a body corporate, be sentenced to a fine of not less than ₦5,000.²⁸

Section 2 provides for offences by body corporate, which states that; where any offence under this Act by a body corporate is proved to have been committed with the consent of or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the body corporate (or any person purporting to act in any such capacity), he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished in the same manner as an individual.²⁹

By the provision of section 3(1) of the same Act, offences under the Act shall be triable summarily by the High Court of the State where the offence was committed and the procedure applicable in the case of summary trial of offences before such court shall apply to the same extent for the purpose of trial force under the Act. Section 3(2) makes provision for the power for the Attorney General of the Federation under section 160 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the initiation and conduct of criminal offence under the Act committed in the State, conferred on the Attorney General of that State but nothing in this subsection shall be construed as precluding the

²⁸ Section 1 of Dishonoured Cheques Offence 1977

²⁹ Section 2 of Dishonoured Cheques Offence Act 1977

Attorney General of the Federation from exercising any of the powers to which this section relates).³⁰

³⁰ Section 3 of Dishonoured Cheques Offence Act 1977

Chapter 5

Banking Contracts

A bank is simply defined to mean any person who carries on banking business and includes commercial banks, an acceptance house, discount house, financial institutions and merchant banks. But for our purpose we shall simply regard or say that a bank is a corporate body duly licensed to carry on banking business.

Formation of Banking Contract

Banking transactions are mainly carried out between the Bank and its customers. The relationship between the Bank and its customers is contractual and emphasis is here laid on this relationship. Like every other contractual relationship, certain formalities must be complied with before the contract is formed. There must be an *offer*, an *acceptance* and *consideration*. These elementary principles of contract apply to the banker/customer relationship without strange or peculiar features. It is however necessary to examine in some detail the parties to this contract.

Parties to the Contract

There are usually two parties to banking contract; the *Banker* and the *Customer*. The customer deposits money with the banker and the banker undertakes to honour cheques and instruments drawn on it by the customer, and to pay the customer's money in its possession as the customer may direct.

The Customer

Being an essential party in banking contracts, it is necessary to determine from the onset who a customer is. "A Customer", is someone who has an account with a bank or who is in such a relationship with the bank that the relationship with the banker and customer exists, even though at this stage he has no account. This definition will suggest that a customer is someone who has some relationship with the Bank and need not necessarily have an account with the Bank before he can assume the status of a customer.

While it is the law that a customer must be an account holder with the Bank, it is also accepted that the account need not have been operated for any duration before the account holder becomes a customer. Thus a person becomes a customer as soon as he opens an account with the Bank, however short the period

of the relationship might have been. In *Commissioners of Taxation v. English, Scottish and Australian Bank Ltd.*,¹ a customer was held to be a person whose money has been accepted by the Bank of the footing that they undertake to honour cheques up to the amount standing to his credit irrespective of whether his relationship with the bank is of a short or long duration. The same position was taken in *United Nigeria Insurance Co. v. Muslim (W.A.) Ltd.*² where a thief opened an account with a Bank and two days later deposited a stolen cheque in the account. The Bank collected the cheque value on his behalf and the thief drew the money rapidly and disappeared. In an action against the bank for the cheque value, it was held that the thief, having opened an account with the Bank, was a customer of the bank and the fact that the relationship was only of a short duration was held to be irrelevant. The Bank was thus held not liable having acted on behalf of a customer and thus coming under the protection offered by *S.82 of the Bills of Exchange Act*.

It has been acknowledged that instances may exist where a banking contract may arise between a Bank and a customer without the customer having an account with the Bank. In *Woods v. Martins Bank Ltd.*,³ the Bank accepted instructions from the plaintiff to collect moneys from a building society, pay a part of money to a company, the plaintiff was going to finance, and to retain the remainder of the money to the order of the plaintiff. Solomon J. held that the banker/customer relationship existed between the parties from the moment the Bank accepted the execution of the plaintiff's instructions even though the plaintiff had not at the time opened an account with the Bank. Again, in *Tate v. Wilts and Resort Bank*,⁴ Legal Decisions affecting Banking 285, Davling J. admitted the situation where the banker/customer relationship may arise even before the customer opened an account with the Bank.

These situations where the relationship was acknowledged even before an account is opened should be seen as exceptions to the general rule. The present position therefore is as was aptly stated that a customer is one who has an account with a bank or who has a relationship with the bank such that the banker/customer relationship is said to be in existence. While certainty of the law may be prejudiced by this position, to hold fast to the position that a customer must necessarily have an account with the Bank would certainly work injustice in exceptional situations.

¹ (1920) A. C. 683

² (1972) S. C. 69 (1968) NCLR 177) 1 All NLR 314

³ (1957) 1 Q. B. 55

⁴ 1899

Formation of the Contract

The contract between a banker and a customer is normally formed upon the opening of an account by the customer. The customer usually completes forms supplied by the Bank in which he gives such information as may be required. These forms are returned to the Bank and constitute the offer. If the bank is satisfied with the offer, it will accept the offer and open the account for the customer.

In *BBC Brown Boveri Ltd. v. Wema Bank Ltd.*⁵ it was held that it is the duty of a banker, when opening an account to obtain adequate information on the customers' standing. Where a banker fails to do so and an innocent customer is defrauded, such a Bank cannot claim statutory protection under S.12 of the Bills of Exchange Act.

The parties are at liberty to agree on such terms of the contract as they deem fit subject to the provisions of statute. In *British and French Bank v. Opaleye*⁶ the Supreme Court held that in the absence of any express agreement to the contrary, the relationship of banker and customer is implied from the course of dealing with the parties.

Basis of the Banker-Customer Relationship

Upon the formation of the contract, a relationship is established between the banker and the customer. The banker/customer relationship has been described as a debtor-creditor relationship. The nature of this relationship was aptly captured by Ogbobine J. in *Osawaye v. National Bank of Nigeria Ltd.*,⁷ where the learned Trial Judge held that the relationship:

Is one of the debtor and creditor with the additional feature that there is no obligation on the part of the particular debtor to seek out his creditor and to pay him. His obligation is only to pay this particular creditor where the creditor makes a demand for payment or directs him to pay...some other person nominated by the creditor, and for the payment to be made, there must be money standing to the credit of the creditor, and where there is no fund there should be a special arrangement for such payments to be made. The fund must not only be sufficient but should also be available (at P.488).

In *Balogun v. National Bank of Nigeria Ltd.*⁸ (*supra*), it was held that the receipt of money from a third party on account of his customer by a banker constitutes the banker into a debtor of the customer. It was held further that since the bank undertakes to pay any part of the money due to the customers, against

⁵ (1989) 1 CLRQ 184; 245

⁶ (1967) All NLR 26; 88, 91.

⁷ (1974) NCLR 474; 254

⁸ *Supra*

the written orders of the customers, then the relationship is that principal and agent with the customer as the principal.

That the bank may act as agent of the customer in certain transactions and this point has been recognized and conceded by the House of Lords in *Foley v. Hill*,⁹ where the Lordships recognized that while the banker is the debtor to the customer, the banker may at times be in the position of agent and the customer the principal. This classification of the relationship as an agency relationship may be misleading as it takes the outstanding features of an agency relationship. As was held in *Foley v. Hill*, the money deposited in the bank by the customer ceases to be the customers' money and becomes that of the bank. The bank may use the money as it pleases without accounting to the customer for any proceeds arising from such use. The bank is only obliged to return in equivalent sum of the money deposited by the customers, with interest where on application. This freedom conferred on the bank with regard to deposits is not in consonance with an agency relationship where the agent is under the control of the principal's instructions in his dealing with the principal's goods.

A bank can only be taken to be the customers' agent when it is carrying out specific instructions of the customer like the opening of letter of credit, the collection of proceeds of a cheque, or the purchase of shares or stock on the customer's instructions.

It has also been suggested that the bank is a bailer of the customer's money in its possession and thus the nature of a banker-customer relationship should be that of bailee and bailor. This contention has never enjoyed any appreciable level of support and was rejected in *Yevaynes v. Noble*.¹⁰ where Sir William Grant stated that money paid into the bank by the customer immediately becomes the property of the banker who may dispose of it as he wishes. This is contrary to a bailment as the bailee under a bailment contract never acquires title to the property. Under a bailment, the bailee cannot use the property except in accordance with the instructions of the bailor. The contract between the two relationships goes to established that the bank is not a bailee of the customer with regard to the deposits lodged by the customer.

The bank may be a bailee of precious property and articles like Jewellery, Certificates, Will and Important Documents. In this sense a bank is a bailee of the property and the bank is bound to take the same care of the property as a reasonably prudent and careful man may be expected to take over his own property. The bank will be liable for any loss or damage to the goods attributable to it fault. In some instances liability is strict. Thus if the bank delivers the goods

⁹(1848) 2 H.L.C 28

¹⁰(1816)

to the wrong person and they are lost, the bank will absolutely be liable even in the absence of negligence.

Although it has been suggested that the relationship between a bank and its customers is that of trustee and beneficiary, this view was firmly rejected in the *Head v. Head*.¹¹ One fundamental point of conflict is that a trustee stands in a fiduciary relationship to the beneficiary and applies and manages the trust property solely for the benefit of the customer. The trustee cannot make and keep secret profits. All proceeds arising from his application of the trust property must be accounted for by the trustee. But the banker is under no obligation to account to the customer for any profits it makes from the use of the customer's deposit. The bank is entitled to make and keep profits and is only bound to pay to the customer such amounts standing to the customer's credit when the customer so demands. The banker cannot therefore be held to be in the same position as the trustee.

In sum, the view that the relationship between the banker and the creditor is that of debtor and creditor with added obligations has been firmly established.

The bank is however a debtor of the customer with regard to money actually deposited with it. A bank cannot be a debtor for money it has not received. In *Balmoral SuperMarket Ltd. v. Bank of New Zealand*,¹² a customer brought money into the bank with the intention of depositing it. While the money was being counted at the counter, robbers attacked the bank and went away with, among others, the uncounted money at the counter brought by the customer. The customer brought an action contending that the money had been paid in the bank should therefore take responsibility for the loss. It was held that until the money was counted, checked and accepted by the bank, the money cannot be said to have deposited with the bank and the bank was therefore not liable.

Obligations of the Parties under the Contract

Customer's Rights and Obligations

The emergence of a contractual relationship between a banker and customer gives rise to certain fundamental duties and rights for the parties. That is, the parties to a banking contract – the banker and the customer owe each other certain obligations. These obligations are mainly implied into the contract from the customer usage of trade. In *British and France Bank v. Opaleye*¹³ the Supreme Court held that in the absence of express agreement, the relationship is implied from the course of business between the parties.

¹¹(1893) 3 ch. 426

¹²(1974) 2 NMLR 155

¹³(1962) All NLR

The respective obligations of the parties were summarized by Lord Atkins in *Joachimson v. Swiss Bank Corporation*¹⁴ as follows:

The bank undertakes to receive money and collects bills from customers account...to repay any part of the account due against the written order of the customers addressed to the bank... It is a term of the contract which the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his unwritten orders so as not to mislead the bank or facilitate forgery...it is a necessary term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch which the current account is kept.

From the above statement, the respective obligations of the parties are discernible and shall be examine in detail.

Obligations of the Customer to the Bank

Duty to Exercise Reasonable Care in Drawing Cheques

The customer has a duty to draw his cheque in such a way as not to facilitate alteration. If the bank makes wrongful payment as a result of the careless way in which the customer draw the cheque, the bank will not be liable. In *London Joint Stock Bank v. Macmillan & Arthur*,¹⁵ a clerk prepared a cheque for the signature of his master, a customer of the bank. The clerk wrote the amount of £2 in figure but with sufficient space between £ and 2 to facilitate alteration of the amount. In addition he did not fill in the amount in words. After his master had signed the cheque the clerk altered £2 to £120 and wrote £120 in words. He cashed the cheque and kept £118 to himself while giving the master the £2. When this fraud was discovered, the master sued the bank but the House of Lords held that the bank was not liable as the customer has not taken reasonable care to draw his cheque. On similar facts, the court in *Young v. Irote*,¹⁶ held the customer liable to bear the loss which was facilitated by her carelessness in drawing the cheque.

1. Duty to Inform the Bank of Missing or Forged Cheque

A customer who misses his cheque or has reason to believe that a forged cheque is about to be drawn on his account with the bank is under an implied obligation to inform the bank upon becoming aware of such facts. In *Greenwood v. Martins Bank*,¹⁷ a wife had been drawing on the husband he knew this but to avoid publicity did not inform the bank upon the death of the wife, the husband sued

¹⁴ (1921) 3 KB 110 at 127

¹⁵ (1981) A.C 777

¹⁶ (1872) 4 Bing. 253

¹⁷ (1933) ACST

the bank claiming all the money paid on the forged cheque. The House of Lords held the husband estopped.

Duty to Make a Demand on the Account

Though the banker is a debtor of the customer, the banker has no duty to seek out the customer and pay money for him. The customer must make a demand for payment of any amount standing to his credit with the bank before such an amount will become payable. The customer is therefore bound to demand for payment in accordance with the agreed mode of making such a demand. The presentation of a cheque amounts to such a demand for payment.

2. Duty to Pay Commission for the Services of his Banker

The laws imply a duty on the part of the customer to pay a reasonable charge to the bank for the service rendered to him. The customer may enter into an express agreement for the charging of a commission by the bank where they grants the customer an overdraft or loan the customer is liable to pay interest. In *Faragol Instruments Ltd. v. National Bank of Nigeria Ltd.*,¹⁸ it was held that an implied form of overdraft or loan agreement between the bank and the customer that a reasonable interest will be charged on such loan and overdraft where no rate of interest was expressly agreed upon.

Banker's Rights and Obligations

(1) Duty to Honour Cheques

The banker is duty bound to honour the customer's cheques up to his credit balance or any agree overdraft. The cheque may be presented by the customer or his order, must be presented during banking hours and at the branch of the bank where the customer has an account. The cheque must have been properly drawn by the customer.

In *Issa v. Union Bank*,¹⁹ the court of Appeal acknowledged that customer who had been granted an overdraft facility is entitled to damages from the bank if cheques drawn to utilize the facility are dishonoured by the bank.

A bank which dishonoured a customer's cheque may be liable for defamation if the customer had sufficient and available funds to cover the amount on the cheque. Where a customer issued a cheque to the third party who present it to the bank and the cheque is dishonoured with the endorsement "refers to drawer", such endorsement is considered as carrying the inference that the

¹⁸ (1993) 1 NWLR Pt. 271 P. 586

¹⁹ (1993) NML pt 288 p. 502

customer lacks sufficient funds to cover the cheque, a fact that is capable of lowering the customer's image before the third party bearer.²⁰

The customer, upon the wrongful dishonour of his cheque by the bank, may bring an action for damages for breach of contract. Damages awarded for wrongful dishonour of cheque are generally nominal; where the customer is a trader, the court may concede substantial damages as it is recognized that the wrongful dishonour is likely to do grave change to the trade.²¹ In *Balogun v. National Bank*,²² it was stated that the modern trend is to allow special and substantial damages to be awarded to “persons in business” and not just traders.

(2) Duty to Keep Correct Account

The bank is bound to keep adequate and correct account of transactions with the customer. The bank which fails to keep correct account and record may mislead the customer by providing wrong information especially with regard to the customer's balance with the bank.

In *Acroflot v. UBA*,²³ the plaintiff paid certain amounts in to his account with the defendant bank. Though he was issued with tellers duly stamped as evidence of receipt of the money by the bank, his account was never credited by the bank with the same. The Supreme Court held that the bank was liable to the plaintiff for the negligence and bound to compensate the plaintiff in damages.

Where a bank credits a customer's account with sums not belonging to the customer's and this misled the customer, they are estopped from claiming that the customer was not entitled to such sums. In *Lloyds Bank v. Brooks*,²⁴ the bank credited a customer with certain sums of money which the customer was not entitled over a period of time. Unaware of the error, the customer relied on her bank statement to draw on her account, and at the time the error was discovered, the customer had drawn £1,108 above her actual credit balance. The bank sought to recover this sum from her. It was held that the bank was estopped from so doing, having by their incorrect information misled the defendant.

Estopped being an equitable remedy avails only the customer who relied on the bank's information without notice of the error, and without intent to defraud.

3. Duty to keep Multiple Accounts of the Customer Separate and Distinct

In *Adejuwon v. Co-operative Bank Ltd.*,²⁵ it was stated that if a banker agrees to open two or more accounts for a customer, the bank has no right, without the

²⁰ *Balogun v. National Bank of Nigeria Ltd.* (1978) 3 SLI55 at pg. 163-164

²¹ *Onyechi v. National Bank of Nigeria* (1977) NWLR 296

²² *Supra*

²³ (1986) 3 NWLR pt. 27, 188

²⁴ (1950) 7 2 J.I.B. 114

²⁵ (1992) 3 NWLR pt. 228 p. 25

consent of the customer, to move either assets or liabilities from one account of the customer to another, the very basis of the agreement to open multiple accounts for the customer being that both accounts are to be kept separate and distinct. This decision re-echoes the position earlier taken in *British and French Bank Ltd. v. Opaleye*²⁶ to the effect that multiple accounts of a customer with a particular banker must be kept separate and distinct.

4. Duty to Act only on the Instructions and Authorization of the Customer

The Supreme Court, in *Nasaralai Ent. Ltd. v. Arab Bank*²⁷, stated that a bank is bound to act only on the instructions of the customer, and a bank which fails to comply strictly with the instructions issued by a customer will be in breach of its duty to the customer. Accordingly payments made by the bank without the customer's authorization are wrongful and invalid. The bank is not entitled to debit the customer's account with such irregularly paid sums. In *Union Bank Ltd. v. Adediran*,²⁸ a signatory to an account with the bank was substituted and replaced by another. The bank was accordingly notified of the change. Despite the notice, the bank still cashed a cheque signed by the previous signatory. It was held that the bank was not entitled to debit the customer's account with the improperly paid sums. The court held further that a banker which honours a cheque on which the customer signature has been forged as drawer is not entitled, in the absence of estoppel, to debit the customer's account with the money to be paid on the cheque.

In the same vein a banker is bound to respect the customer's instructions and where the customer has effectively countermanded a cheque issued by him, the bank must not honour such a cheque. *S.75 of the Bill of Exchange Act* provides that the banker's duty to honour a cheque ceases immediately the cheque is countermanded.

5. Duty to Report Cheque Dishonoured as Forged

Where a cheque has been presented to a banker and rejected on the ground that the cheque is forged, the bank is bound to report the incident to the customer. In *Greenwood v. Martins Bank Ltd.*²⁹ Sculston L. J. stated simply that: *The banker, if a cheque was presented to him which he rejected as forged, would be under a duty to report to the customer to enable him to inquire into and protect himself against the circumstances of the forgery.*

²⁶ *Supra*

²⁷ (1986) 17 NSCC part 2 p. 1039

²⁸ *Union Bank Ltd. v. Adediran* (1987) 1 NWLR pt. 47 p. 52

²⁹ (1932) 1 KB. 321

6. *Duty of Secrecy*

The relationship between the banker and customer is one of utmost confidence. The bank must not, without the customer's express or implied consent, disclose to third parties the state of the customer's account or any of the customer's transactions with the bank. The bank must not disclose confidential information about a customer and this duty of non-disclosure subsists even after the determination of the banking contract, and after the death of the customer. A breach of this duty renders the bank liable to the customer in damages.³⁰

7. *Duty to Supply Cheque Books and Pass Books*

The customer cannot operate the account without a cheque book or pass book as the case may be. The bank is therefore bound to supply these documents to enable the customer operate the account.

8. *Duty to give Reasonable Notice before Closing an Account*

In *BCCI v. D. Stephens Industries Ltd.*,³¹ the court held that a banker is not entitled to arbitrarily close a customer's account which is in credit without giving the customer a reasonable notice of its intention to do so. In *Joachimson v. Swiss Bank Corporation*,³² Lord Atkin held that it is term of the contract that the bank will not cease to do business with the customer except upon reasonable notice.

In *Buckingham & Co. v. London & Middle and Bank Ltd.*,³³ the defendant bank had, without prior notice, closed the customer's account. The customer was held entitled to damages for the breach of the duty by the bank. Where the account is in debit, it appears that no notice need be given by the bank before the account is closed.³⁴ Whether or not notice of closure given by the bank is reasonable is a question of fact.

Exceptions to the Rights and Obligations of Banker

The contractual relationship between a banker and its customer give rise to several rights and obligations as already noted. However, these rights and obligations are not without exceptions. The legal implications of these qualifications are that the bank is removed from liabilities.

The fundamental exceptions to the general rule constituting the rights are discussed as follows.

³⁰ *Touner v. National Provincial & Union Bank of England* (1924) 1 KB. 461

³¹ (1992) 3 NWLR pt. 232 p. 772

³² *Supra*

³³ (1895) 12 TLR 70

³⁴ *Prosperity v. Lloyds Bank Ltd.* (1923) 39 TLR 372

Insufficiency of Fund

A banker owes it an obligation to honour customer's cheques, however the banker is not obliged to honour a cheque where there are no sufficient funds standing to the customer's credit and available for withdrawal. In *Ademiluyi v. African Continental Bank*,³⁵ it was held that defendant has rightly dishonoured a cheque presented by a customer who had insufficient cash in his account to cover the amount on the cheque. The court held that for a banker to be obliged to honour a cheque there must be funds standing to the customer's credit and available to cover the whole amount of the cheque; or in default of such sufficient and available funds, there must be a special agreement for payment, e.g. agreement for an overdraft. In *Issa v. Union Bank*,³⁶ the Court of Appeal acknowledged that customer who had been granted an overdraft facility is entitled to damages from the bank if cheques drawn to utilize the facility are dishonoured by the bank. The implication of the foregoing is that, where the customer's balance or limit is insufficient to cover the cheque or payment, the bank will be absolved from liability.³⁷

Countermand of Payment

Countermand of payment implies a cancellation of such payment order. Any one of several executors, trustees, partners of joint account-holders may countermand payment of a cheque drawn by any or all of them. Such countermand authority must be signed in accordance with the existing mandate. It is also a necessary requirement that countermand of payment must be in writing in clear and unambiguous terms, duly signed by the customer. Notification of the stop, must come directly into the banker's hand. The correct number of the cheque and the amount must be given to the banker at a time before payment is effected. The case of *Nwadu v. Barclays Bank D.C.O.*,³⁸ which is illustrative of this principle, in that case, the plaintiff had at all material times a current account with the defendant bank. The plaintiff issued a post-dated cheque for ₦1,320 in favour of a company, but before presentation he made a valid countermand of the cheque. The bank negligently honoured the cheque on presentation and the plaintiff asked the defendant for the sum paid out to be re-credited to his account. The plaintiff said in evidence that the cheque had been given for work done and to be done by the payee which he had failed to perform and so he countermanded the cheque.

The bank's defence was based on the equitable doctrine under which a person who had paid the debts of another without authority may be allowed to

³⁵ (1984) NMLR 137

³⁶ *Supra*

³⁷ *Augustine Chigozie UBA v. Union Bank of Nigeria* (1995) 7 NWLR p.18 para A.

³⁸ (1962) 2 ALL N.L.R 218

take advantage of his payment. The court found as a fact that there was a valid countermand of the cheque before presentment which came to the conscious knowledge of the banker, the debt owed by the customer was not undisputed, and as such the bank cannot be allowed to take advantage of the equitable defence to debit the customer's account with the amount. The learned trial judge was of the view that the bank having disregarded the express direction to dishonour the subsequent payments cannot in law be a valid discharge of the bank's duty. To hold otherwise would "strike at the very root of the relationship of trust and confidence between the banker and the customer."

The principle of law also established in the foregoing discussion is that only the drawer has the authority to countermand the cheque. The position of the law received judicial approval in the case of *Ademiluyi and Lamuye v. ACB*.³⁹ Like the drawer, a payee may attempt to countermand payment if the cheque has been lost, but the best person to contact is the drawer. Removal of a stop or countermand must always be authorized by all the required signatories as well.

Notice of Customer's Death and Mental Incapacity

Where no notice of the customer's death/mental incapacity has been received by the bank before cheque is presented for payment, the bank is under no liability to refuse payment. Until notice of death is received, a banker is entitled to pay all cheques, and cheques received after notice of death may be returned marked "Drawer deceased". Notice of death may be formal, by production of death certificate or constructive, by notice in the newspaper. The death of the customer vitiates all mandates and authorities relating to the account.

If the bank wishes to retain the liability of the deceased in respect of a debit account to which he is a party, then it is necessary to stop the account to prevent the operation of the rule in Clayton's case.⁴⁰ This is the case which is the leading authority upon what is known as the "appropriation of payment".⁴¹ The principle enunciated in this case is that, if a debtor owes more than one debt to his creditor and pays him a sum of money insufficient to liquidate the whole of the debts, it is sometimes a matter of importance to know to which debts the payment is to be appropriated. From the Clayton's case the following rules are derived:

- (a) A debtor making a payment has a right to appropriate it to the discharge of any debt due to the creditor;
- (b) If at the time of payment there is no express or implied appropriation thereof by the debtor, then the creditor has a right to make the appropriation;

³⁹ (1964) NWLR 137

⁴⁰ Omolayi A. Adeniyi, *Law of Banking*, Ile-Ife, University of Ife Press, 1981. p. 43

⁴¹ *Devaynes v. Noble* (1816) Mer 529 et seq

- (c) In the absence of any appropriation by either debtor or creditor, an appropriation is made by presumption of law according to the terms of the account, the first item on the debit side being the item discharged or reduced by the first item on the credit side;
In case the deceased conducted a sole account, no further debits should be placed on the account, but if the deceased is one of several parties to a credit account, there will usually be no need to stop the account, and the mandate has to be checked whether amendment is necessary;
- (d) Notice of an act of bankruptcy committed by the customer having been received by the banker, the bank may not pay cheques drawn by the customer in favour of himself or his credit balance.
- (e) Whether notice of presentation of a bankruptcy petition against the customer has been received by the banker.
- (f) In circumstances where a receiver order or a winding up order has been made against a limited liability customer
- (g) Where the customer himself has assigned the balance in his account.
- (h) Where a garnishee order attaching the balance in the customer's account has been served on the bank, or a court injunction prohibiting transactions on the account has been granted.
- (i) Where there has been notice of a defect in the presenter's title.
- (j) In the circumstances that the customer or the payee is an undischarged bankrupt.
- (k) In case of breach of trust by the customer in drawing cheques.

Disclosure under Compulsion of Law

It is very fundamental that the law expects that the transaction must not be disclosed to any person, that is the banker owes the customer the duty of confidentiality as already noted, a customer has a right of action, where there is a breach of this confidential relationship, however this duty is not absolute.

Under the *Bankers Book (Evidence) Act 1879*, a statute of general application in Nigeria,⁴² section 7 provides that on application of any party to a legal proceeding, a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be either with or without summoning the bank or any other party and shall be served on the bank three days before the same is obeyed unless the court or judge otherwise directs. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

⁴² Section 45(1) of the Interpretation Act, Cap 89 LFN, (1958)

The expression in the Art relating to ‘bankers book’ has been defined to include ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank. The word ‘court’ as used has been defined as the court, judge arbitrator, person or persons before whom criminal proceedings are being taken. Any of the aforementioned has power to order that the prosecutor may inspect and take copies of entries in the book of a bank at which the defendant keeps his account. Where officers charge with the responsibility of investigating cases just walk up to the bank managers requesting for permission to inspect customers’ accounts suspected of committing criminal offences, without complying with the procedure provided by law, it is humbly opined that such police investigators ought to be refused permission and this does not make the branch manager liable or look unpatriotic, because the duty of secrecy of bankers in relation to customers account is a legal one.

Disclosure under Public Interest

The second exception mentioned by *Bakes L. J.*⁴³ is “where there is a duty to the public to disclose.” An example of this would be when during time of war the customers dealings indicated trading with the enemy. There is a public duty compelling the banker to disclose information concerning the account of his customer where the proceeds credited thereto are found fraudulent or stolen. In this circumstances, the bankers duty to the public to prevent fraud in the course of his operations supersedes the duty of secrecy owed to the customer, where this situation arises he need not wait for any court order, as he has a valid defence to an action for a breach of the duty at the instance of the customer.

Disclosure in the Interest of the Bank

The interest of the bank would require disclosure of information concerning the account of its customer where the bank makes a demand in writing for repayment of an overdraft or issue writ claiming payment of a loan or overdraft and stating on the face of the writ the amount owed.

Disclosure with the customers’ consent

When the disclosure is made by the express or implied consent of the customer, there is no liability attached to this conduct by the bank. The furnishing of what is called banker’s references is an important service customarily rendered by bankers to customers who are in business.⁴⁴ In doing so, the bank will be held liable if the information is fraudulently given or without due care. The implication of the

⁴³ *Tournier’s case (supra)*

⁴⁴ *Sunderland v. Barclays Bank Ltd.* (1938) 5, 163; C & S 10

above statement is that disclosure by consent of the customer does not totally erase the liability of the banker if he acted without due care. In *Midland Bank Ltd. v. Seymour*,⁴⁵ it was decided that the bank must take due care not to furnish information which is false or misleading. If as a result of the breach of this duty, the customer suffers damage the banker will have to compensate him. Finally, there could be no action for breach of duty where the party to whom the duty is owed has consented to the breach.

From the above analysis, it becomes clear therefore that the duties of a banker to his customers are not absolute or sacrosanct. Rather, legally permissible exceptional situations exist where they will not be liable though there exists a deviation from their duties.

Protection of Bankers

Here we are concerned with protection of bankers against liabilities where a valid cheque is paid to, or collected for a person who is not the owner.

Ordinarily, a banker's is to pay its customer's cheques and to do so quickly. In doing so, it runs the risk of paying one to a wrong person.

If this happens: (a) the bank cannot ordinarily debit its customers account –

(a) It is liable in conversion to the true owner – the damage being the face value of the cheque. It is to reduce the liability in this regard that the law has provided some defences for the bankers particularly where they acted reasonably and in good faith.

By virtue of S.60 of the Bills of Exchange Act were where a banker pays a cheque drawn on him in good faith and in the ordinary course of business, he is not to be prejudiced by the fact that an indorsement was forged or made without authority and he is deemed to have paid the cheque in due course.

It must be noted that the banker must act in good faith (mostly) and in the ordinary course of business (i.e. in accordance with normal banking practice). For example, A draws a cheque on a bank in favour of C, it is stolen by D who forges C's indorsement and negotiates it to E who negotiates to F who eventually obtains payment from B bank.

If the bank pays to F in good faith and in the ordinary course of business they are not prejudiced by the forgery. In effect therefore the bank can debit A's account and are not liable in conversion to the true owner C.

Similar C cannot sue A either because the payment was made in due course of business which discharge the drawer. This however will be so where the cheque has in fact reached the payee. Thus if the cheque was stolen before it reached C, C would still be able to sue A on the original debt.

⁴⁵ (1955) 2 Lloyd's Rep. 147

2. Furthermore, the liability of the payee bank may also arise where a crossed cheque is not paid in accordance with the crossing. Thus if it pays in accordance with the crossing it will also be protected from liability if the payment is made in good faith and without negligence.

S.82 Bill of Exchange Act

Where the banker, on whom a cross cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker and if crossed specially, to the banker to whom it is crossed or his agent for collection being a banker, the banker paying the cheque and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same right and be placed in the same position as if payment of the cheque has been paid to the true owner thereof, e.g. A draws a cheque on the M Bank in favour of John Smith settlement of a debt, John Smith receiving the cheque and crosses it generally. It is stolen by a thief who goes to W bank, pretends to be John Smith and opens an account in that name. The W bank presents the cheque to the M bank who paid in good faith and without negligence.

In this cases although the spurious John Smith had no tittle, S.80 protects the paying bank from liability to real John Smith who is also barred from suing A.

Collection Banker

If a banker collects payment of a valid cheque for a person who is not the owner, he exposes himself to an action for conversion at the suit of the owner (true). It can however escape liability by virtue of S.77(2) BEA.

For a banker to succeed in its defence under the section it must prove:

- (a) That it acted in good faith;
- (b) That there was no negligence on its part;
- (c) The transaction was for a customer.

Instances of Negligence

- (a) Collecting official cheques without enquiring for the private account of a company official or public officer.
- (b) Collecting money payable to the partnership account without enquiring, for the private account of a partner.
- (c) Collecting for the private account of an official, cheque payable to him in an capacity.
- (d) Collecting cheques for an amount which is manifestly inconsistent with the customer status in accounts.
- (e) Collecting cheques crossed "A/C Payee only" for the other account other than that of the payee.

Note: A bank could not be said to be acting in the ordinary course to business:

- (a) Where it pays before or after the normal business hours.
- (b) Where it pays a crossed cheque on the counter.
- (c) Where it pays an open cheque presented through post by stranger.

Termination of Banker and Customer Relationship and Its Legal Consequences

Termination by Mutual Agreement

The relationship between banker and customer may be terminated by mutual consent, or unilaterally by either party. The place of mutual agreement requires little explanation. In Nigeria, most commercial banks show little if any enthusiasm for opening account for serving members of the National Youth Service Corps (NYSC) Scheme. It is therefore under special arrangement between the NYSC authorities and designated banks that corps members are allowed to open “salary account” for the duration of the service year. At the end of each service year, existing accounts are closed as servicemen and women disperse. This is not to suggest that those wishing to continue operating such accounts are barred, however, such instances are rare thus becoming exceptions to the general rule.

When the banker-customer relations come to an end by mutual consent any balancing owing to the customer must be paid to him and any existing overdrafts cleared. Claims by third parties must be dealt with according to the rules governing the relationship and any unused cheque books returned. In theory, the relationship between banker and customer may like any other contractual relationship be terminated by mutual agreement. In practice, however it is nearly always one party or the other who wishes to put an end to the relationship and so the contract is usually terminated unilaterally. Hence closure of an account could either be by customer or by the banker. A banker could close an account of the customer depending on the bank’s policy or when the balance in the account is below the minimum cash required. Such closure of account extinguishes the relationship. When the customer’s account has been closed, either by the customer or by the banker, the relationship of banker and customer is at an end, and neither party is under any contractual obligation to the other, same only in one respect; namely that the banker’s duty of secrecy still subsists.

Termination by Notice

Notice to close the account can be given either by customer or banker the position differing somewhat according to which of them gives the notice. Since the customer is entitled to withdraw his balance on demand, it would appear that he is under no obligation to give any advance notice of his decision to close the

account. But the mere withdrawal of the balance will not in itself have this effect, and the customer must make his intention clear to the banker. More over the closing of the account does not necessarily bring the mutual obligations to an end. The customer clearly remains liable for any overdraft, and the banker for properly conducting any operation needed in connection with the closure, and indeed even after the account has been closed the banker's duty to keep it confidential appears to continue.⁴⁶

On the other hand, the banker cannot close the account without giving reasonable notice. The length of the notice will depend on the character of the account and the circumstances of the case. The customer must be given time to make such arrangements as are necessary to protect his credit.⁴⁷

An injunction will not normally be granted to restrain the closing of an account since damages will be sufficient and the remedy by injunctions is not appropriate for the enforcement of a contract of debt.

Termination by Death of Customer

The death of the customer terminates any authority he has given to his banker to act for him and should in theory operate as an automatic countermand of any outstanding cheques.

Section 75 (2) of the Bills of Exchange Act 1882 provides that it is the notice of death which revokes the authority to pay cheques.

The bank cannot act until it receives notice of the customer's death. It is the actual notice of death which revokes the authority to pay cheques. In *Bank of America v. Kujore*,⁴⁸ Johnson J. observed as follows:

That the relationship of customer and bank is terminated by death of the customer is a correct statement of the law as it relates to the encashment of cheques, but it must be clearly stated and admitted as a correct statement of the law that any indebtedness in favour of a deceased or against him, ensures either for the benefit of, or against the estate of such deceased. That in my considered view is the slight difference in the relationship of a customer and the banker as it relates to the effect of death on such relationship.

A customer, who dies leaving a will, will surely have any bank balances of his vested in his executors. In case of a customer who dies intestate, a prudent banker should consider such customer's bank balances as vested in the appropriate probate authorities until administrators are appointed.

⁴⁶ *Tournierv. National Provincial Bank Ltd.* (1924) I.K.B. 46 p. 20

⁴⁷ *Buckingham v. London & Midland Bank* (1895) 12 T.L.R. 70: C & S 205

⁴⁸ (1978) 8 CCHCJ 1279 at 1282

Notice of death should be confirmed by the production of the death certificate to the bank. On notice of death, the customer's account must be stopped and no further payments are allowed. However, the following are special cases:

- a. **Joint account:** The common law right of survivorship allows the survivor to continue the account.
- b. **Partnership account:** Death of a partner may require the firm to be dissolved, but more usually the partnership agreement allows the firm to continue, and the account may run on. The principal question which arises on the death of the customer is as to the person entitled to receive any balance standing to the credit of the deceased's account. This is not very difficult.

The personal representatives (executor or administrator) is entitled to be paid the money. His authority depends on the probate or letters of administrations, and the banker is entitled to the production of one or other of these before making payment,⁴⁹ and indeed would run some risk in making payment without such production. Payments made in good faith under probate or letters of administration are protected in the events of irregularity subsequently coming to light.⁵⁰

The Mental Incapacity of Customer

According to the Principle in *Yonge v. Tonybee*,⁵¹ the mental disability of the customer should automatically terminate the relationship certainly, in all cases where the banker's authorization is to act as agent, and for any subsequent act he would be personally liable. It follows therefore that if a bank customer becomes of unsound mind or mentally incapacitated to such an extent that he cannot direct his own affairs in an appropriate manner, then, the contract between him and the bank is determined in like manner as if he died.

The banker's position as mandatory is not necessarily governed by the same considerations as it affects his agency and until the point comes before the court it must remain in doubt. It is usually considered that in respect of cheques, at any rate, the authority to pay is only revoked by notice of such disability⁵² and it is certainly desirable that the rule should be the same as in the case of death. It is often very difficult to decide whether a person is so mentally disabled as to be

⁴⁹ *Tarn v. Commercial Bank of Sydney* (1884) 12 Q.B.D. 294

⁵⁰ Administration of Estates Act 1925

⁵¹ (1910) 1 K.B. 215

⁵² Megmah. *The Bankers Customer*. 2nd Ed. P. 76

deprived of contractual capacity. The test of mental incapacity under the Mental Health Act⁵³ is as follows:

Is the person, by reason of mental disorder, incapable of managing and administering his property and affairs? Clearly this is difficult thing for a banker to pass judgement on.

If a receiver has been appointed by the court of protection, the bank's position is clear-cut: a) the customer's accounts must be stopped; b) a receiver's account must be opened and conducted in accordance with the terms of the court order.

More usually, the bank is in the position of making enquiries about whether the customer is mentally incapacitated, for example by asking the customer's medical supervisor to confirm if he is able to manage his own affairs. If "no", the accounts must be stopped forthwith and all mandates are determined. If "yes", the accounts may be allowed to run as normal and the customer may give further mandates to allow, for example, a son or daughter to operate the account on his behalf.

Bankruptcy

Bankruptcy of a customer is governed by the provisions of the *Insolvency Act 1986*. The main concern of the banker is to ensure that he takes appropriate action to safeguard the bank from possible loss through subsequent claims from the trustee in bankruptcy. However, the position of the bank at the various stages in bankruptcy differs in effect.

Transactions with the customer prior to the presentation of a bankruptcy petition cannot subsequently be set aside by the trustee (unless they would be proved to be a preference or a transaction at an undervalue). Thus, payment of cheques, receipt of credits and release of safe-custody items are protected whether the account is in debit or in credit and this is so even where the bank is aware that the customer is insolvent. On the other hand transactions with the customer after the presentation of the bankruptcy petition can be analysed in two perspectives:

- a. Where bank is unaware of petition, dealings with the customer after the presentation of a bankruptcy petition are protected provided they take place in good faith, for value, and without notice of the petition.⁵⁴
- b. Where bank is aware of the petition, dispositions of a debtor's property between the date of his petition and his bankruptcy order are void unless the court sanctions them. Thus the bank could be made to repay any funds which

⁵³1983

⁵⁴Insolvency Act 1986. S. 284

it had released from the account, and would not be protected by the *Insolvency Act 1986, S. 284*.

On the other hand, the bankruptcy order makes the customer bankrupt, hence, no further transactions with the customer should be allowed after the bankruptcy order. If the bank was to continue the account inadvertently, it could obtain some relief from the *Insolvency Act 1986, S. 284*. This provides that the bank would be protected if it were reasonably practical to recover the payment from the payee. Bankruptcy or, in the case of a company winding up, is usually considered to terminate the relationship; on whichever side the bankruptcy or winding up takes place whether this result follows as a matter of law is doubtfully, though it is certainly arguable that it destroys the basis of the contract, and therefore brings it to an end. Generally speaking its practical effect is to terminate the relationship, though in certain cases it continues, probably because a new contract arises by implication.

Finally, the bankruptcy of the customer, terminates the banker's authority to pay his cheques or to accept or pay bills or take other action on his behalf involving property rights, for these are all automatically transferred to the trustee in bankruptcy. In the circumstances the account may and in the great majority of cases clearly should, be closed.⁵⁵ On the making of a receiving order the balance, if any, to the credit of the customer's account is automatically transferred to the official receiver or the trustee in bankruptcy if and when appointed. The banker then comes under a duty to pay or deliver to the trustee in the bankruptcy any money or securities in his possession or power and a neglect of his duty is punishable as a contempt of court.⁵⁶

- In general, when one of the parties to a contract becomes bankrupt, this does not *ipso facto*, determine the contract.
- The rights under the contract usually pass on the bankruptcy of a party thereto, to his trustee.
- The banks' duty and authority to pay cheques drawn upon him are ordinarily determined when he receives news of the presentation of a bankruptcy petition against the drawer.
- Where subsequently cash or cheques are tendered for the credits of the customer's account, the banker should still accept these although the customer should not be allowed to draw against them for as long as the bankruptcy petition remains undischarged.

⁵⁵Bankruptcy Act (1914). Sched 11, paras 10 & 12, p. 362

⁵⁶Bankruptcy Act (1914). S. 48(6)

- His contractual rights to operate the account will be restored if the bankruptcy petition is dismissed.
- Where the petition is not dismissed, a receiver order may be made whereby an official receiver is constituted receiver of the customer's property, and his will be followed by an adjudication order whereby the customer is finally adjudged bankrupt.
- Following the order, the customer's property vest in a trustee.

Outbreak of War

In connection with the outbreak of war, the question that arises is whether the contractual rights between the banker and customer are abrogated if the parties are separated as a result of hostilities.⁵⁷ This issue was considered in *Arab Bank Ltd. v. Barclays Bank DCO*.⁵⁸ Where the following principles were laid:

First, the ordinary performance of the contract between banker and customer is prevented by the outbreak of war, with the result that banking services cannot be performed. Thus, no items may be paid into the account and no cheques drawn on the account may be honoured;⁵⁹

Secondly, a customer's right "to be paid a credit balance on a current account is a right which survives" the outbreak of war.⁶⁰ Additionally, "the right is suspended not destroyed";⁶¹

Thirdly, it may happen however that sequel to the outbreak of war, a legislation is enacted requiring assets of enemy subjects to be vested in a custodian of enemy properties (including bank balances). Where this happens, the legislation may provide that bank balances of enemy subjects be paid to the custodian who is empowered to give discharge therefore. When this happens it stands clear that the relationship between banker and customer will be determined.

The second principle laid down by their Lordship in this case was clearly breached by the Federal Government of Nigeria, when at the end of the nation's civil war in 1970, it directed the payment of twenty pounds (£20) to all bank depositors in the erstwhile Biafra, irrespective of their actual deposits (the pound was then the unit of currency in Nigeria before the introduction of the naira).

Thus, properly considered, what the federal directive clearly amounted to was destruction not suspension of the right to recover bank balances. The right or

⁵⁷ Ibid, section 456, 468, and 478 of CAMA Cap C20 LFN, 2004.

⁵⁸ *Arab Bank Ltd. v. Barclays Bank DCO* (1954). AC 495

⁵⁹ Per Lord Reid at page 534

⁶⁰ Per Lord Morton of Henryton at page 529

⁶¹ Per Lord Reid at page 535 and Lord Cohen at page 541

recovery never survived the war but perished with the order stipulating the £20 ceiling on payment to bank customers.

Garnishee Orders

All that needs to be said here is that the banker – customer relationship may be terminated by the operation of a garnishee order absolute.⁶² When the court makes an order attaching the judgement debtor's bank balances in its entirety a banker who pays in all of the customer's money in obedience to the court order is no longer indebted to the customer whose funds by operation of law has ceased to remain in the bank's custody. There is no longer a contractual duty on the bank to repay some or all of the customer's money on demand. Absolved of this obligation the banker is no longer debtor to the customer and the basis of the banker-customer relationship ceases to exist. *Ayuba v. Ogunleye & Shangoranti (Egbado Trading Co.) Bank of America – garnishee*.⁶³

Winding up of Company Customer

1. Sec. 401 of CAMA makes provision for three modes of winding up: Court, Voluntary and Winding up subject to the supervision of the Court.
2. A winding up itself is the process whereby the life of a company registered under companies Act is terminated.
3. Upon the termination of its existence, its business is given up, and this followed by apportioning of its assets and/or liabilities to those to whom they are due.
4. The company ceases to exist only by the formal act of dissolution.
5. The existing banker-customer relationship will extinguish when the control of the company's bank account passes from the directors to the liquidator.
6. If the liquidator wishes to continue as a customer of the bank, he should be advised to open a new account since at law, a company and its liquidator are separate entities and so money standing to the credit of the liquidator's account is not a debt owing by the banker to the company.

Winding up of Bank

- It will put an end to the contract between banker and customer
- Loss of customer's credit/deposits present a real legal dilemma which the creation of NDIC has come to address.
- Under NDIC scheme, all bank deposits are legally insured up to a maximum sum of fifty thousand naira (₦50,000.00).

⁶² I. J. Goldface-Irokalibe. *op. cit.*, Lagos, Malthouse Press. Page 110

⁶³ *Ayuba v. Ogunleye & Shangoranti (Egbado Trading Co.) Bank of America – garnishee* (1970) NCLR 21

- In the event of collapse of a bank, the NDIC steps in to wind up its affairs.
- The NDIC pays the customer's claims.

Chapter 6

Electronic Banking

Introduction

The main business of banking has traditionally been deposit taking and lending. Recently, banks have become multifunctional institution engaged in array of business activities beyond the traditional main activities of deposit taking and lending. It is common that banks partake in activities as diverse as securities dealing, investment management and insurance. These separate activities are often carried out by different subsidiary companies within the same banking group. Banks are now capable of providing their customers with a wide range of financial services.¹

Banks have commonly been in the forefront of harnessing technology to improve their products and services because of the diversity of their customers, and to provide customer service; as well as the sophisticated nature of financial instruments. They have been using electronic and telecommunication networks to deliver a wide range of value added products and services. The range of services and products offered by different banks vary widely both in their contents and sophistication. E-banking provides immense benefits to consumers in terms of the ease and cost of transactions. It is a service that allows customers to use electronic means to access account, specific information and possibly conduct transactions from a remote location – such as at home or at the workplace.²

The most efficient system architecture and advanced technologies are being used for e-banking to provide easy and cost efficient services to the financial sector. This enables banks to carry out services like online banking to their customers. E-banking has been around for some time in the form of automated teller machines (ATMs) and telephone transactions. It has now been transformed by the Internet, a new delivery channel for banking services that benefits both

¹ L. S. Sealy and R. J. A. Hooley, *Commercial Law Text, Cases and Materials*, 3rd Ed (Oxford University Press Inc., New York, 2005, pp.566r-567.

² O. Sunday and P. E. Arnold, Accessing E-Banking Based on Resilient Transaction, <[http://www.bth.se/fou/cuppsats.nfs/all/775e02c759f2cad8cl2573f4006e3486/\\$file/Master_Thesis_E-banking_updated.pdf](http://www.bth.se/fou/cuppsats.nfs/all/775e02c759f2cad8cl2573f4006e3486/$file/Master_Thesis_E-banking_updated.pdf)> (03 April 2012), p.8.

customer and bank. Access in fast, convenient, and available round the clock, regardless of the customer's location.³

Nevertheless, Nigerian legislators are not forthcoming in updating or enacting laws in the country that will be proactive to meet up with the ever developing information and communication technology (ICT) in general and e-banking in particular. This has led to the dearth of effective and efficient laws to regulate e-banking in the country; save for the guidelines released by the Central Bank of Nigeria (CBN) in 2003 and 2010 on e-banking and e-payment respectively.

In Nigeria as in other parts of the world, the banking industry came to recognize the importance of integrating modern information and communication technology into their operations. Thus, in recent years, the growth of computer knowledge acquired added importance to the expansion of retail banking delivery systems and the development of new electronic retail products and services. The ability to deliver modern automated technology products efficiently in a retail manner has become the fulcrum of the marketing strategies of virtually all banks.

A visible manifestation of banking application of computers is in the area of customer service delivery. Computerized banks almost instantly respond to customer relations and other banking activity enquiries and with the deployment of facilities such as automated teller machines (ATMs) banks are able to serve customers outside the normal banking hours and outside banking halls. Although the effectiveness and efficiency of banking today is much more than mere storage and retrieval of information, computer give banks the ability to promptly react to market trends, changes in the business climate or new directives from regulatory bodies such as the Central Bank, and the Federal Ministry of Finance among others. It is further considered true that in a highly competitive banking industry, speed is a clear-cut advantage. Electronic banking therefore has an edge over the traditional banking methods given that with its technological sophistry comes speed and efficiency which constitute the requirements and indeed the *sine qua non* of any successful operation and application of electronic banking.

By providing a quicker and more reliable means of funds transfer in addition to expanding the delivery channels in the financial sector to accommodate elements of the old and modern banking techniques in the sector, electronic banking, impacts rather positively on service delivery in the financial sector of the Nigerian economy. There is general belief that these developments have however not been matched with appropriate legislative parties engaged in the provision of electronic banking services.

³ Ibid.

What Is E-Banking?

E-Banking is a generic term encompassing other specific terms such as Internet-banking, personal computer banking (PC-banking), online-banking, mobile-banking, telephone-banking, short message service (SMS)-banking, e-payment, e-cards, e-cards, e-cash, e-money, digital-cash, e-cheque, etc.

Modern e-banking was at its inception basically about funds transfer and enquiries. It has now however grown into the deployment of some or all operations of banking services electronically. Thus, e-banking is the increasing dematerialization of banking quickened by rapid developments in ICT. E-banking now comprises in a wide-range of products and services offered by an equally broad variety of operators such as merchandise retailers, courier companies and manufacturers among others.⁴ E-banking may be viewed as an automated delivery of new and traditional banking products and services directly to customers through electronic interactive communication channels.⁵

In other words, e-banking may mean a method of transacting modern banking business through the use of automated processes and electronic devices such as computers, telex and fax machines, the Internet, card payments, automated teller machines, telephones and other media.⁶

E-banking involves computer based systems which are used to perform financial transactions electronically. It allows bank customers to pay money from one account to another, pay bills and transfer funds using recognised electronic channels, among others. It represents a variety of financial services performed through electronic devices. It is an online real-time technology which gives individual bank 'a one-branch status', since customers can operate their bank accounts in any branch of the bank irrespective of where the account was opened and domiciled.⁷

E-banking has adequately been described as "the wonders of modern computer technology...that has customer interact with an e-banking facility rather than a human being."⁸ From the foregoing, e-banking may simply be defined as the business of banking conducted through electronic devices such as computers, telex, fax machines, the Internet, card payments, automated teller machines, telephones and other electronic media.

⁴ R. Umoren, *The Nigeria Banking Services User's Handbook*, (Global Money Nigeria Limited, Lagos, 2006), p.314.

⁵ http://www.bankersonline.com/technology/gurus_tech081803d.html (24 August 2012).

⁶ I. J. Goldface-Irokalibe, *op. cit.*, p.203

⁷ A. Agbada, 'Electronic Banking in Nigeria: Problems and Prospects from Customers Perspective,' *CBN Bullion*, Vol.32, No.4, October/December 2008

<http://www.cenbank.org/OUT/2010/BULLION/BULLION%20MAG%20%20OCTOBER-DECEMBER%202008%20ORIGINAL.PDF>>, p.19

⁸ F. Mishkin and G. Eakins, *Financial Markets and Institutions*, (Pearson Addison, Wesley, 2006), p.457

Evolution of E-Banking

Judging from the meaning of e-banking as proffered above, e-banking is an old and long existing term which is now modernized with the advent of ICT. E-banking has been in existence right from when land-line telephone, telex and fax machines among other electronic devices were used to facilitate banking business. It passed through stages of development up to the present day modern e-banking.

The evolution of modern e-banking in Nigeria is said to have started in the 1980s and was popularized by the advent of banks that were christened ‘new generation’ banks. The founding of Diamond Bank Plc with online real-time interconnectivity facility popularized e-payment nationwide. This awakened new dimensions to competition among banks; and consequently, banks embraced e-payment options to stem up competition. Likewise, the innovations brought by e-banking enabled banks to display their products on their websites.⁹

In 1986, Societe General Bank of Nigeria introduced online real-time banking in its five branches in Lagos. Many other banks followed this lead. It introduced integrated banking applications delivered through a wide area network (WAN) in a real-time online mode.¹⁰ By early 1990s, CBN made it mandatory for all banks to computerize their operations. Toward the end of the twentieth century, e-banking was given a boost with the coming together of a consortium of nineteen (19) of the strongest banks in Nigeria to implement a smartcard e-purse scheme to be known as ‘value card’. Unlike similar schemes elsewhere, a sale outlet would require only point of sale (POS) equipment to accept cards from all the banks.¹¹

In 1991, First Bank of Nigeria took a stake into the future with its entry into the market for e-card products. It launched its ‘First Cash’, the brand name for its ATM, in some of its branches.¹²

The modern e-banking has gained acceptance in Nigeria on a rather rapid rate. The adoption of e-payment processes actually started with the introduction of magnetic ink recognition character (MICR) cheques. This was followed by the introduction of ATMs for cash dispensing, account balance inquiry and payment of utilities in the early 1990s. The use of payment cards (smart cards) was

⁹ A. Agbada, *op. cit.*, p.20

¹⁰ E. Woherem and R. Alamutu, “the Networked Bank: LANs, WANs, the Internet, intranet and GroupWare Systems”, in E.E. Woherem, (ed.), *Information Technology in the Nigerian Banking Industry*, (Spectrum Books Limited, Ibadan, 2000), pp.79-84

¹¹ D. Adayeri and E. Woherem, “The Telephone and Computer in Banking: Constraints and Challenges in Nigeria”, in E. E. Woherem, (ed), *op. cit.*, pp.94-97.

¹² C. Ndekwa, *First Bank of Nigeria: A Century of Banking*, (Spectrum Books Limited, Ibadan, 1994), p.242.

introduced by the CBN in 1993; and in August 2003, CBN issued guidelines on e-banking.¹³

The CBN guidelines identified the recognised e-banking operators, agents, products and channels. Specifically, banks and other financial institutions were identified as operators; Internet service providers, switch and electronic funds transfer (EFT) messages companies were identified as e-banking agents; while cards products, EFT, e-bill presentation and digital cash were identified as e-banking products; and mobile phones, ATMs websites (Internet) and POS devices were identified as e-banking channels. For effective inter-banking operations, the launching of inter-switch by a consortium of banks in 2004 was a delight to consumers. Thus, the Nigerian Inter-Bank Settlement System (NIBSS) introduced the NIBSS EFT (NEFT) in 2004 as a boost to e-banking operations.¹⁴

CBN Economic Report for the first half of 2008 expressed that the rise in the use of e-payment was sustained in the first half of 2008, reflecting the aggressive marketing strategy of the banks and increased public awareness.¹⁵

Today, however, e-banking is gaining more acceptances in Nigeria, particularly in commercial centres. With the introduction of cash-less economic policy by the CBN, e-banking is undoubtedly growing; and this is further strengthened by the fact that all the banks in Nigeria deliver e-banking products and services to customers in varying degrees. However, ATM is accounting for the highest transaction among all e-banking channels.¹⁶ The CBN cash-less policy is expected to boost e-transactions using POS and has equally accounted for a great development in e-banking.¹⁷

Nature and Scope of Electronic Banking

Two broad classification of the application of electronic banking in Nigeria may be considered as those falling under non-network category and those that are network based.

Non-network based electronic banking requires the presence of the customer at the point of service which essentially means his physical presence either at the banking hall or at the location of an electronic service machine. It does not entail the use of the Internet. The automated teller machine (ATM) and the Smart card are good illustrations.

¹³ Ibid.

¹⁴ R. Umoren, *op. cit.*, p.316

¹⁵ A. Agbada, *op. cit.*, p.20.

¹⁶ Ibid.

¹⁷ 'Cashless Policy: Limited POS Deployment, Awareness threatens Adoption', *The Saturday Punch*, (Lagos), 18 February 2012, p.48.

Generally, banking online has attracted increasing attention from bankers and other financial services industry participants, the business press, regulators, and law makers globally. Some of the reasons for e-banking patronage are the notion that e-banking and e-payment will grow rapidly, more or less in tandem with proliferating e-commerce; industry projections that e-banking will reduce banking costs, increase banking revenue growth, and make banking convenient for customers; and some vexing public policy issues. Despite this attention, there is a dearth of systematic information on the nature and scope of e-banking. Bankers and public policymakers alike have had to plan using largely anecdotal evidence and conjectures.¹⁸

Banks offer e-banking services in two main ways – an existing bank with physical offices can establish a website and offer e-banking services to its customers as an addition to its traditional delivery channel; and alternative is to establish a “virtual”, “branchless”, or “Internet-only” bank.¹⁹ The computer server that lies at the heart of a virtual bank may be housed in an office that serves as the legal address of such a bank, or at some other location. Virtual banks may offer their customers the ability to make deposits and withdraw fund via ATMs or other remote deliver channels owned by other institutions.²⁰

Hence, the scope of e-banking is not exhaustive; it keeps expanding as new electronic devices spring up daily. However, the scope could be said to cover any electronic means used to facilitate automated clearing systems; automated payment systems and automated delivery channels in the banking industry.

Smart Cards

Smart cards (electronic money) are used in place of cash for making payments. It appears that the smart card made its first appearance in Nigeria in 1996 when the Central Bank of Nigeria approved the introduction of a Smart Card Scheme by Diamond Bank. Two further significant developments in this area were the setting up of a smart card company by a consortium of 19 banks in 1998. This company came to be known as Smart Card Nigeria Plc., with authorization to produce and manage cards issued by member banks of the group. The next to follow was the second consortium of more than 20 banks under the umbrella of Gemcard Nigeria Limited which introduced the Gemcard scheme during the year 2000.

Automated Teller Machines (ATMs)

¹⁸ K. Furst, *et al.*, Internet Banking: Developments and prospects, Office of the Comptroller of the Currency Economic and Policy Analysis Working Paper 2000-9, <http://199.83.40.54/publications/publications-by-type/economics-working-papers/2008-2000/wp2000-9.pdf> (04 February 2013), p.1

¹⁹ Virtual bank is though not operative in Nigeria owing to the fact that the CBN has prohibited banks from operating without physical structure. Thus, virtual or Internet-only bank is not allowed for now in Nigeria.

²⁰ K. Furst, *et al.*, *op. cit.*, p.1

Automated Teller Machines are cash drawing outlets that offer round the clock service to customers through the nationwide network of the banks ATMs. An additional facility available on some ATMs is the loading of smart cards. An ATM may also serve as a publicity outfit for marketing any range of electronic banking product and service being offered by the bank to the public.

Network-Based Banking

In contradistinction to non-network based banking, network based electronic banking affords customers easier and more convenient service. It generally involves the use of Internet for web based service or online operations as well as the use of telephone networks. It entails the use of electronic information technology networks for the transmission and decoding of information anywhere and thus does not require the physical presence of the customer. Transactions may be carried out from anywhere in the world. Examples include:

Electronic Fund Transfer (EFT)

This is a global money transfer facility which allows customers to enjoy the benefit of money transfers from one banking account to another at the international level. Various banks offer this service under different names. Some banks choose to call it 'Travellex', while some call it 'Moneygram'. The Western Union money transfer scheme is a specie of electronic fund transfer.

Telephone Banking (Telebanking)

Under telebanking transactions are commenced and completed via a secure information pathway that can be availed of only by a password or personal customer unlimited access to his accounts and enables him to carry out global banking transactions using any touch tone telephone at anytime, anywhere, round the clock. The customer may thus, initiate and conclude a variety of banking services as bank balance enquiries, countermand of cheque, effecting bill payment, ordering cheque book and a host of other services that may include the receipt of statement of account via fax machine.

Mobile Banking (M-banking)

M-banking involves the use of the popular mobile phones. It allows the customer to operate his account using the mobile phone provided the phone is aligned to the bank's network supports (SMS service). A customer may be able to check balances and records of up to two previous transactions.

Personal Computer Banking (PC Banking)

This kind of electronic banking service is possible only where the personal computer is connected to the net and has an installed dial-up connection with the

bank. With PC banking services, a customer or office can effect banking transactions with the bank using his computer and thus avoid the stress of physically visiting the bank or calling at any service point.

Legal Structure of E-Banking in Nigeria

The government of every country is the provider of legislation defining the country's financial institutions to be licensed; and constantly monitoring the activities of the financial institutions to maintain sound and efficient system in order to retain customer's trust and confidence. Currently, there is neither an Act of the National Assembly specifically entitled e-banking Act; nor a bill pending before the National Assembly entitled e-banking bill. The only regulations on e-banking are contained in the Central Bank of Nigeria guidelines on e-banking issued in August 2003; as well as standard and guidelines on ATM issued in 2010, which are widely criticized as being inadequate.

However, there are Acts of National Assembly as well as bills pending before the National Assembly that have direct impact on e-banking even though they are meant for different purposes. Hence, the legislations, regulations and guidelines relating to e-banking constitute the legal structure of e-banking. Likewise, draft bills pending before the National Assembly, relating to e-banking would constitute the legal structure of e-banking, if successfully passed into law.

The legal structure of e-banking is composed of Acts such as Banks and Other Financial institutions Act, 2010; Central Bank of Nigeria Act, 2010 from which the CBN Governor derived his powers to issue out guidelines on e-banking is August 2003, as well as standard and guidelines on ATM in 2010; Nigeria Deposit Insurance Corporation Act, 2010; Foreign Exchange Act, 2010; Evidence Act, 2011; Consumer Protection Council Act, 2010; and National Information and Technology Development Agency Act 2010. These Acts, though are not purposely enacted or passed on e-banking, but they indirectly impact on e-banking in one way or the other.

Other prospective constituents of the legal structure of e-banking may include some bills pending before the National Assembly, although not yet passed into law, there is bright prospect of their passed into law in no distant future. These include Centre for Information Technology Research and Training Bill, 2004; Electronic Messages, Information and Commercial Bill, 2004; Computer Systems and Networks Security and Protection of Critical Information Infrastructure Bill, 2005; Digital Storage Centres, Electronic Communications and Transactions Bill, 2006; Cyber Security and Information Protection Agency Bill, 2010; Facilitating Electronic Transaction Bill, 2011; Lawful Interception of Information Transmitted Using Telecommunications Facilities Bill, 2011; Legal Recognition of Electronic Messages in Commercial Transactions Bill, 2011;

Regulation of Telecommunication Facilities to Support Investigations Bill, 2012 and Use of Information in Electronic Form Bill, 2013.²¹ All the bills listed above have no direct relationship or impact on e-banking, save for that entitled 'Regulation of Transfer of Money by Electronic Terminal Bill, 2011' which is clearly on e-payment.

Electronic Banking and Associated Inhibitions

Electronic banking being relatively new in Nigeria has certain problems associated with it, some of which may indeed constituted limitations to its widespread use.

First, the various kinds of electronic banking services are novel and they are still in their infancy. Thus, a customer cannot today in Nigeria open a new banking account via electronic means, he still has to call at the bank personally to complete all formalities and give his specimen signature and present identification as required by law.

Second, the initial capital outlay for customers wishing to avail of electronic banking facilities may not quite be within reach of most bank customers. For instance, unless the customer already possesses computer equipment with all the accessories, there will be an initial financial outlay on his part. This will entail the purchase of a computer, the installation of a telephone line, fax equipment and Internet connection. All these will further require provision for maintenance of facilities and cost of Internet service providers. Furthermore, it may be observed that customer wishing to avail of certain services such as loan facility cannot complete such transactions on line. In Nigeria today, banks still require signature on a document evidencing the loan agreement as well as personal discussion on matters relating to collaterals, all of which requires calling at the bank offices, finally, the absence of a comprehensive regulatory framework to streamline the conduct of electronic banking is seen as a major obstacle to customer's acceptance of the electronic banking facilities, offered by banks. Against this background the following legal and regulatory framework issues may be highlighted.

Banks and Other Financial Institutions Act

This Acts regulates the activities of the banking industry in Nigeria. It embodies ruled aimed at streamlining the operation of banks. The Act does not expressly provide for the regulation of electronic banking. Nevertheless, by virtue of section 57 the Governor of the Central Bank of Nigeria is clothed with power to make regulations published in the *Federal Gazette*, to give full effect to the objects and objectives of the Act, as well as power to supervise and regulate the activities of the other financial institutions.

²¹<website.informer.com/visit?domain=nassnig.org> (10 December 2012).

If the Governor should make regulations requiring the keeper of electronic records as part of banks compliance with section 24 of the Act which requires banks to keep proper books of account with respect to all the transactions of the bank this will presumably be right. However, it must be said that banks adopting electronic banking techniques do not need to apply to the Central Bank for express permission to do so.

Evidence Act

As has already been observed there is presently no specific legislation exclusively on electronic banking, thus digital signature may not be solely relied upon as evidence in electronic banking transactions. By virtue of the decision in *United Nigeria Insurance Company v. Muslim Bank*,²² banks are obliged to establish the identity of their customers as well as inquire about their integrity right from the time of opening the account. This portends taking proper references and physical identification of the customers. The vogue in Nigeria is even for banks to use their own facility to record the photograph of the prospective customers at the time of opening the account, a procedure that suggests the ruling of digital signature or online account opening process.

In *Yassin v. Barclays Bank DCO*,²³ the Supreme Court of Nigeria speaking through Lewis, JSC held that:

If one divides up in section 6(2) (now section 97(2)(e) the matters which must be proved this shows that to admit a copy of a banker's book it must be established that:

1. the book in which the entries copied were made was at the time of making one of the ordinary books of the banks; and
2. the entry was made in the normal and ordinary course of business; and
3. the book is in the custody and control of the bank; and
4. the copy has been examined.

The evidence in item (4) can be given by any person who has made the necessary examination but the evidence for item (1), (2) and (3) must be given by a partner or officer of the bank concerned either orally or by affidavit. Subsequent decisions coming from law courts tend to adhere to this exposition of the law.

In *Anyaeobosi v. R. T. Briscoe Ltd*,²⁴ the Supreme Court did not decide on the actual status of a computerized statement of account which was the document in question albeit it was suggested *obiter* that the court recognized the modern

²² (1972) 1 All NLR 314

²³ (1968) NMLR 380 at 385

²⁴ (1987) 3 NWLR (pt. 713) 610 at 625

trend in banking relating to the use of computer. This dictum of the court may not be safely relied on.

Similar in effect is also the dictum of Onalaja, JCA in *Ogolo v. IMB Ltd.*,²⁵ where the learned justice of the Court of Appeal thought that *commercial and banking operations* in the keeping of accounts has changed to computer which makes Nigeria to be modernized and in keeping with computer age which system is so notorious that judicial notice of it can be taken under section 74. Evidence Act as well as on section 2 of the Evidence Act to posit that technology generated documents can appropriately be admitted as primary document.

It would be unsafe to rely on these dicta which went contrary to the decision of the Court of Appeal in the more recent case of *Nube Commercial Farms Ltd. v. NAL Merchant Bank*,²⁶ where the court invoked the principle enunciated by Lewis JSC, in *Yassin v. Barclays Bank DCO* while rejecting a computer printout as evidence.

Decisions such as those in *Yesufu v. ACB*,²⁷ and *Unity Life and Fire Insurance v. IBWA*²⁸ further demonstrate that our courts do not recognize computer printouts as primary documents, preferring instead, to subject them to the rigorous standard laid down by Lewis LSC in *Yassin v. Barclays Bank DCO* (*supra*).

Trans-border and Jurisdictional Issues

Trans-border risks may pose different challenge from the usual risks banks face within their domestic confines. For instance, newer and newer electronic money schemes are being developed on the basis of modern technology and procedures fashioned in the developed democracies, such as large international payment card companies. Information on products and/or schemes being promoted in their countries may not be fully available to local regulatory authorities. Lack of sufficient information may work against the reaction of local authorities and their responses in the light of their particular national concerns.

Similarly, electronic banking transactions cut across national borders, thus raising in some cases the question of applicable law. Issues of cybercrimes and the appropriate criminal jurisdiction will essentially hinge on the jurisdiction where the relevant elements of the offence occurred. It has been thus suggested that to avoid liability for infringement of the law in certain jurisdictions, that electronic

²⁵ (1995) 9 NWLR (pt. 419) 324

²⁶ (2001) 16 NWLR (pt. 704) 510

²⁷ (1976) 4 SC 1 at 12-13

²⁸ (2001) NWLR (pt. 713) 610, 625

bankers may consider limiting website access from these jurisdictions, but this approach also raises the question of browsers honesty in disclosing their location.

Telecommunication Infrastructures

Paperless inspection of banks is a necessary concomitant of electronic banking. However, the recurring failure of network which characterizes our telecommunication system becomes a source of worry for an electronic based banking outfit.

Broadly speaking electronic banking is founded upon an efficient and effective power and telecommunication base. The erratic power supply situation and the high teledensity in Nigeria result in low Internet usage. Banks thus have to rely heavily on alternative power sources to be able to provide 24-hours on-line service. This state of affairs raises issues of high overheads as the cost of running operations with power generating plants reveal. Even when the intermittent power supply turns on, network failures and damage to equipment sometimes result from spikes and surges occasioned by erratic power supply. All said therefore, the challenges of power and telecommunications infrastructure is formidable and real.

Electronic Fraud

The term ‘electronic fraud’ is in its generic sense, a term used in describing all classes of frauds associated with the computer system. The species are vast and varied. It embraces all manner of abuses from theft of data to wilful damage to data. Among the prominent species of computer frauds are unauthorized access to or tampering with the Programme, damage to computing sources, denial of access to authorized user and the removal of protection features among so many others. The diverse manifestations of electronic fraud with the Nigerian banking community may have to guard against and our briefly discussed below.

Electronic Funds Transfer Fraud

Large scale emigration of labour from Nigeria to other shores has brought an increase in overseas remittances by immigrants to their families and friends. In addition to this the move from cash to cashless society in the developed democracies has fuelled the resort to electronic transfers. The growth of electronic transfers has brought with it the risk of interception and subsequent diversion. Electronic funds transfers services are thus very likely targets of fraudulent interception and this may be extended to automated teller machines.

Internet Banking Fraud

Fraudsters using the Internet to commit bank frauds usually employ impersonation. A customer may be impersonated or the bank itself may be

impersonated. A criminal impersonator may have the account numbers, passwords and other sensitive information including even telephone numbers of potential victims. Fraud can arise when someone disclaims a transaction after it has taken place. Since there is no physical link between the bank and the customer it becomes very difficult to verify, fix responsibility or trace perpetrators.

Telemarketing Fraud

Just like the Internet fraud, telemarketing fraud involves the use of information technology medium. Telephone, mail order and Internet have all emerged as dominant modes of conducting commercial intercourse in the modern communication era, thus replacing the traditional face to face buying and selling. Telemarketing employs telephone to advertise sell or canvass service functions to potential customers who may be end users or businesses, and this may be outbound or in bound. The element of fraud arises when criminal minded telemarketers abuse the trust or confidence of unsuspecting victims to whom they present supposedly genuine deals which all turn out to be fake.

Others

Other forms of electronic frauds which may be perpetuated in an electronic banking milieu include the well-known Advance Fee Fraud, otherwise known as (419), credit card fraud, and telecommunication fraud. All these kinds of frauds provide avenues for dishonest persons to make dishonest gains for themselves at the expense of others.

The phenomenon of advance fee fraud is perpetrated through the mechanism of deliberate distortion and misrepresentation of facts, and/or figures with the objective of ripping off funds from gullible and greedy persons to whom supposedly lucrative deals are presented. The fraudster usually holds himself out as someone in a position of authority with access to information or someone with merchandise imported from abroad and available for distribution and sale. Credit card fraud is usually perpetrated through lost and stolen cards, intercepted cards, telephone/mail order altered cards and a host of other modalities including use of counterfeit cards.

Future of Electronic Banking

Generally, it is pertinent to state that, diverse kinds of malpractices have existed in the banking industry since time immemorial. Indeed, the very nature of the industry it must be admitted, lends itself to the manipulations of dishonest persons who throughout every generation continue to seek the attainment of wealth and riches through outright dishonest and fraudulent means. The advent of electronic banking therefore, has brought with it fresh challenges which have

exposed diverse manifestations of the evil genus in man as fraudsters deploy various weapons in their arsenal to cheat others and attain for themselves individuals and private gains.

Various commentators have attributed the growth of electronic fraud in the banking system to diverse factors which include, *inter alia*, hurried acquisition and deployment of new technology (computerization) in their operations by banks, inadequate supervision of staff and the rush to attain full automation as an edge over rivals competing for patronage. Other factors identified include changes in data management and control procedures, frequent changes in computer technology and inadequate training of computer operators and their supervisors. Whatever may be the merits of these factors in promoting electronic frauds in banks, it is certain that electronic frauds within the banking system and elsewhere in the larger society have come to represent one more shade of the diverse kinds of criminal activities to which mankind has become heir.

Legal and non-legal approaches must therefore be employed to combat electronic frauds in its diverse manifestations. This phenomenon is worldwide and must be therefore be seen as peculiar to any one nation, although the incidence of this, like other crimes, varies from country to country. The legal approach to combating electronic fraud in Nigeria's banking system may consist in putting in place new legislating and regulations that specifically deal with electronic banking and proper amendments to the Evidence Act in matters having bearing on the admission of electronic evidence by courts. Indeed, different forms of computer-based practices, such as the use of PIN numbers as well as computer generated evidence, have all emerged in recent times as the use of old banking methods give way to automated electronic devices including magnetic character, microfilms and disks that have similarly emerged as the modern and efficient mode of storing and retrieving large amount of information. All these development have to be reckoned with in any new legal intervention.

The non-legal approach in fighting frauds, whether they be electronic or otherwise, must be found in new societal value that de-emphasize the adulation of wealth irrespective of how it is acquired. If questions are asked when people make show of wealth even when such displayed wealth clearly could not have laid a strong foundation for plain and honest dealings that would greatly minimize if not totally eradicate the propensity for frauds, electronic or non-electronic.

Considering the status of banking in the country's economic and financial sector, and the fact that e-banking constitutes the larger part of the activities of modern banking business, it is very germane that the law makers are proactive in enacting laws on e-banking taking cue from other jurisdiction. This is because of the dynamic nature of ICT which is the driving force for e-banking. Likewise, the

CBN should be constantly updating its guidelines on e-banking. The regulation should also spell out rights and liabilities of e-bankers and their customers.

Specific Issues on Internet Banking

We are all busy in our day to day lives and have restricted time to spend on our administration, but we always need to keep on top of our finances.²⁹

Internet Banking lets you access your account whenever you want – so it is easy to manage your money, wherever you are in the world. As long as you have Internet access, you have a door to your own banking needs.³⁰

What is Internet Banking?

Internet banking may be defined as a means whereby banking business is transacted using the Internet.

Who can use Internet Banking?

All bank account holders, corporate and individual.

What are the benefits of Internet Banking?

- i. Easy access to your account(s) from anywhere in the world;
- ii. Online real-time account monitoring facility;
- iii. Convenience of conducting banking transactions from comfort of home/office;
- iv. Guaranteed security for all your online transactions;
- v. Easy access to banking information and products;
- vi. Effective, cheaper and easier way for customers to communicate with banks; and
- vii. All 24/7 access to account.³¹

How much does it cost to get Internet Banking?

It is free.

What can a customer do with Internet Banking?

- i. Check current and available balances;
- ii. View and download transaction history for various accounts;
- iii. Pay bills, transfer money to external accounts and set up standing orders;
- iv. Transfer money between your banking and savings accounts;

²⁹ Clydesdale Bank, "Banking Online" (<http://cbonline.co.uk>)
<http://www.cbonline.co.uk/personal/ways-of-banking/> Accessed 18th of January, 2016

³⁰ HSBC, 'New to Internet Banking' (<http://www.extat.hsbc.com>)
<http://www.expat.hsbc.com/1/2/Internet-banking> Accessed 18th of January, 2016

³¹ GtBank, 'Internet Banking' (<https://gtbank.com>)
<https://gtbank.com/personalbanking/way-to-bank/Internetbanking#benefits> Accessed 16th of January, 2016

- v. Transfer money overseas;
- vi. Request a new overdraft, or request an increase limit for an existing overdraft (subject to status); and
- vii. View or cancel Direct Debits set up on your account and order Travel money – collect it from your local branch or have it delivered to your door.³²

What infrastructure has to be in place?

All you need is a personal computer or other device that is connected to the Internet.

How can i get the Internet Banking Service?

You need to fill a form. The Internet banking application form can be downloaded from the website of your bank. It is also available at all its branches. You can fill the Internet banking form and submit it to the branch.

How Does Internet Banking Work?

Customers log on to the website of the bank, click on Internet Banking tab and “login to Internet banking” link. Thereafter enter the access code, username and password as provided by the branch CSU and proceed from there.

How Do Customers Log In The First Time?

For the first log in, the customer must use the access code, user name and password assigned to him/her. After which the password is changed to the desired one and the access code, username and new password are used for subsequent log in.

Alternatively, you may login using your account number and putting the token to your phone or email containing a software token. Enter this token in a password box that will appear with the message “Enter the Password sent to your Mobile Phone or email Address.” Once the info inputted is successful, the system would now provide you a box to create PIN and then login.

Can I make offshore transfers from my Internet Banking?

Yes. However, you will require an ordinary domiciliary account to be able to do this.

Is there a fee for the hardware token?

Yes. The token usually come with a fee.

³² Bank of Scotland, ‘What I can do online’ (<https://www.bankofscotland.co.uk/https://www.bankofscotland.co.uk/aboutonline/what-can-i-do-online/>) Accessed 18th of January, 2016

How Secure Is Internet Banking?

One very serious concern Internet banking is the high exposure of the system to fraudsters, hackers and other criminally minded persons who could access, retrieve and utilize confidential information from the system if appropriate security measures are not put in place to checkmate unauthorized intrusion into the system.

The latest electronic encryption technology, currently utilized by most banks in Nigeria, ensures the safe transfer of information over the Internet. You will be required to create your own password.

How often can customers transfer funds?

As often as possible up to a daily limit of ₦2 million.

Who/Where can funds be transferred to?

Funds can be transferred to both local and foreign beneficiaries.³³

Are banks required to put in place procedures for maintaining the banks' Web Site?

Yes. Bank are required to put in place procedures for maintaining its website.³⁴

What types of procedures are banks required to put in place for Internet Banking?

The Central Bank of Nigeria requires that Banks put in place procedures for maintaining the banks' Website which should ensure the following:

- i. Only authorized staff should be allowed to update or change information on the Website;
- ii. Updates of critical information should be subject to dual verification (e.g. interest rates);
- iii. Website information and links to other Websites should be verified for accuracy and functionality;
- iv. Management should implement procedures to verify the accuracy and content of any financial planning software, calculators, and other interactive programs available to customers on an Internet Website or other electronic banking services;
- v. Links to external Websites should include a disclaimer that the customer is leaving the bank's site and provide appropriate disclosures, such as noting the extent, if any, of the bank's liability for transactions or information provided at other sites;

³³ Zenith Bank, 'Internet Banking' (<http://www.zenithbank.com>)
<http://www.zenithbank.com/FAQs.aspx> Accessed 16th of June, 2015.

³⁴ Central Bank of Nigeria, 'Guideline on Electronic Banking in Nigeria' 2002, Paragraph 1.4.3

- vi. Banks must ensure that the Internet Service Provider (ISP) has implemented a firewall to protect the bank's Website where outsourced;
- vii. Banks should ensure that installed firewalls are properly configured and institute procedures for continued monitoring and maintenance arrangements are in place; and
- viii. Banks should ensure that summary-level reports showing web-site usage, transaction volume, system problem logs, and transaction exception reports are made available to the bank by the Web administrator.³⁵

Types of Risks associated with Internet Banking

The risk associated with Internet banking include: strategic risk, operational risk, security risk, reputational risk, legal risk, money laundering risk, cross border risks and other risks. These risks are briefly discusses below.

i. Strategic Risk

Strategic risks are those risks associated with board and management decision. This risk could arise as a result of weak, shallow, corrupt or not well thought out projects planning, timing and implementation. However, the degree of this risk depends upon how well the institution has addressed the various issues related to development of a business plan, credibility of the vendor (if outsourced) and level of the technology used in comparison to the available technology, etc.

ii. Operational Risk

Operational risks take the form of inaccurate processing of transactions, non-enforceability of contracts, compromises in data integrity, data privacy and confidentiality. Also, inadequacies in technology, human factors such as negligence by customers and employees, fraudulent activity of employees and crackers/hackers can become potential source of operational risk.

iii. Security Risk

Security risk refers to the unauthorized access or intrusion to a bank's information systems and transactions. Attackers could be hackers, unscrupulous vendors, disgruntled employees or even pure thrill seekers. Also, in a networked environment the security intrusion is often limited to the weakest link.

iv. Reputational Risk

Reputational risk is the risk of getting significant negative public opinion, which may result in a critical loss of funding or customer. These are risks arising from banks' or third parties actions resulting to a major loss of the public confidence in the banks' ability to perform functions or impair bank-customer relationship.

³⁵ Central Bank of Nigeria, 'Guideline on Electronic Banking in Nigeria' 2003, paragraph 1.4.3

These actions vary from system or product not working to the expectations of the customers, significant system deficiencies, significant security breach, inadequate information to customers about product use and problem resolution procedures, significant problems with communication networks that impair customers' access to their funds or account information especially if there are no easy alternative means of account access.

v. Legal Risk

Legal risk results from violation of, or non-conformance with laws, rules, regulations, or prescribed practices, or when the legal rights and obligations of parties to a transaction are not well established in the course of delivery of banking services and products via electronic channels.

vi. Money Laundering Risk

This is a risk that financial institutions are exposed to when their systems are used in moving criminal funds.

vii. Cross Border Risks

Cross border risks are risks that banks are exposed to in the course of their international transactions arising from differences in legal/regulatory and jurisdictional ambiguities with respect to the responsibilities of different national authorities. These risks are associated with non-compliance of different national laws and regulations, including consumer protection laws, record-keeping and reporting requirements, privacy rules and money laundering laws.

By the nature of cross border risk apart from the legal risk, a bank could also be exposed to other risks like the operational, credit risk and market risk as a result of geographical and market expansion beyond the national borders which make monitoring more difficult.³⁶

Bank Verification Number and Salient Facts

The Central Bank of Nigeria through the Banker' Committee and in collaboration with all banks in Nigeria on 14 February, 2014 launched a centralized biometric identification system for the banking industry tagged Bank Verification Number (BVN).³⁷

The BVN project was introduced due to increasing incidents of compromise on conventional security systems (password and PIN) and a high demand for

³⁶ Central Bank of Nigeria, 'Report of the Technical Committee on Electronic Banking' 2003, paragraph 2.2

³⁷ Central Bank of Nigeria, 'Bank Verification Number' <http://www.BVN.com.ng/> Accessed 3rd January 2015, see also Ehi Eric Esoimeme, 'A Critical Analysis of the Bank Verification Number Project Introduced by the Central Bank of Nigeria' (Springer Plus Forthcoming) 2015.

greater security for access to sensitive or personal information in the Banking System.

The project aims to achieve the following objectives

- i. Protect Customers Bank Accounts from unauthorized access;
- ii. Address issues of identity theft, thus reduce exposure to fraud; and
- iii. Enhance the Banking Industry chances of being able to fish out blacklisted customers.³⁸

Importance of BVN

- To identify Banking Customers.
- To authorize financial transactions.
- It is a means of sharing data when one enrolls for a BVN, the information can be made available.
- To uniquely identify Bank's Customers across banks and across accounts. Once a customer enrolls and obtains a BVN, that same BVN is tied to all his Bank accounts.
- The possibility of banks blacklisting people who have committed financial infractions. It could be fraudsters; it could be people who have forged documents, etc.
- The BVN removes losses occasioned by fraudulent customers who move from one bank to the other.
- The beauty of it all is the unique identification in the financial space.
- The BVN allows for detection of fraudsters and subsequent blacklisting of such and which will be accessible to other banks and stakeholders in the financial space.
- It helps to build retail credit as today's emphasis has been on retail lending.
- For purpose of authorization of financial transactions down the road, on an Automated Teller Machine (ATM) or a Point of Sales, (POS); you can use your biometric identifier to say 'Yes, this is me and I am authorizing the payment'.
- The cost is borne by the Banker's Committee.
- BVN will not completely eliminate fraud but will highly mitigate fraud.

³⁸ Central Bank of Nigeria, 'Bank Verification Number (BVN)' (<http://www.CNB.gov.ng>) <http://www.CNB.gov.ng/Paymentsystem/BVN.asp> Accessed 9th of August 2015, See also Central Bank of Nigeria, 'Bank Verification Number' <http://www.BVN.com.ng/> Accessed 3rd January 2015, Ehi Eric Esoimeme, 'A Critical Analysis of the Bank Verification Number Project Introduced by the Central Bank of Nigeria' (Springer Plus Forthcoming) 2015.

Below are some Commonly Asked Questions about the BVN Project**What is Enrolment?**

Enrolment is the process of capturing a customer's details which includes fingerprint and facial image after which a BVN is generated.

How does a customer get BVN?

A customer enrolls at any branch of a bank where he/she has an account or intends to open an account.

Must every customer have a BVN, is it compulsory?

Yes it is.

How long does it take to get a BVN?

It takes up to 24hrs after Enrolment to get a BVN.

What is the benefit of enrolment for a BVN?

The BVN helps to reduce fraud, increase the efficiency of banking operations and also customer access to future credit facilities.

How is the BVN communicated to the customer?

Once the BVN is generated, the bank would inform you of your BVN. All customer would receive SMS alerts.

If a customer forgets his/her BVN what should the customer do?

The customer should contact his/her bank where the enrolment was carried out, to retrieve the number.

How/where can you update customer information, e.g. in case of change of address?

The customer goes to his/her bank and follows the bank's processes for updating customer information. A customer can update his/her information only at the bank where he/she has an account.

Does the BVN change when customers update their record?

No, the BVN doesn't change.

When does my BVN expire and how do i renew?

The BVN expires after 10 years. After 10 years of the issuance of the BVN, the customer goes back to his/her bank to re-enrol.

Does my BVN Number remain the same for life?

Yes it does.

Can a customer enrol in one bank and get the BVN from another bank?

No, the customer can only pick up his/her BVN at any branch of the same Bank he/she enrolled.

What happens if a person steals another customers' BVN and comes to the bank?

The person's live fingerprint will not match what is stored on the customer's record.

What happens next after the BVN has been generated?

A customer's identity can now be verified against their BVN.

Does a customer have to be physically present to enrol?

Yes, because the customer's physical features, e.g. Fingerprints have to be captured.

What is the enrolment procedure for Corporate Accounts?

Individuals who are signatories to corporate accounts will enrol and their BVNs would be linked to the corporate account by the Banks.

Can minors be enrolled?

No, only bank-able adults can be enrolled.

What is Verification?

Verification refers to the process of confirming a customer's identity.

What is Offline Verification?

Offline verification will authenticate the customer by comparing the fingerprint or the facial image with the data stored on the BVN card.

What happens if a customer is an amputee?

The facial features of the customer will be captured as fingerprints will not be required for Amputees.

Will Biometric Function be implemented on POS and AM Terminals, and if yes, how will it work?

It will be implemented at a later stage. More details to come.

How would bank customers living outside Nigeria enrol?

Bank customers living outside Nigeria can now enrol in any of the designated registration centres:

London: OIS Services, 56-57 Fleet Street, London EC4Y 1JU, UK

Opening Times: Monday to Friday (10am-4pm)

Tel: +44 (0) 20 78320001

Leicester: OIS Services, the Peepul Centre Orchardson Avenue, LE4 6DP, UK

Opening Times: Friday (10am-4pm)

Tel: +44 (0) 20 78320001

Washington: OIS SERVICES, Washington DMV, 11900 Parklawn Drive, Suite 160, Rockville, MD, 20852.

Opening Times: Monday to Friday (9:00am – 4:00pm)

Tel: +1 869 929 8995

Who does a customer contact with regards to any biometrics compliant?

The customer should contact his/her bank.

Would a customer have to go to all banks where he/she has an account to enrol?

No, once a customer is enrolled at one bank and a BVN is generated, the customer only has to take the BVN to other banks to link such accounts.

Are Customers' Information secure?

Yes they are, the details are encrypted and stored in a secure database.

Is it possible to start an enrolment and finish later? Can it be saved like a Draft?

No, because the enrolment is done real time, it is necessary that it is completed in one session.

What happens if a customer comes to enrol with a bandaged/injured fingers?

Customers with injuries or bandaged fingers are advised to return for enrolment once fingers are healed. However if you require special exemption please contact your Bank.

What happens to individuals that cannot write or are illiterates. How do they fill the Enrolment Form?

A customer service officer will assist the customer in filling the enrolment form.

Can a customer choose which of his/her accounts will be linked to the BVN?

No, a customer cannot, all accounts would be linked.

What is the Basic Identification Needed for enrolment?

It depends on the level of account the customer wants to open. Please contact your bank.

For Joint Accounts how does the linking work?

All signatories of the accounts shall be linked.

Are there terms and conditions to be agreed to by customers before giving out his/her details?

Yes, there are Agreement clauses at the end of the enrolment forms.

After a customer has enrolled and collected his/her BVN, would the customer still be required to provide another means of identification at the point of transaction?

No, a formal identification is not needed because verification is done at the point of transaction.

Since I am a bank customer and the bank already has my information, do I have to fill an Enrolment Form?

Yes, everybody fill a form irrespective of an existing account holder.

Is there a deadline for every bank customer to be enrolled?

Yes, the deadline for registration is 31st of October 2015, but it has been severally extended. However, continuous registration is provided for new account holders or customers.³⁹

³⁹Source: [http://www.BVN.com.ng/BVN FAQ.pdf](http://www.BVN.com.ng/BVN%20FAQ.pdf)

Chapter 7

Securities for Bank Lending: Perfection and Enforcement

Introduction

Bank lending is based principally on *trust* and *faith* in the customer and his business, and the subject matter for which the loan is being sought. But because of the high incidence of the risk of recovery, bankers generally insist on obtaining securities for the loan granted which either may be on simple deposit of the customer's title documents depending on the duration of the loan, or duly processed mortgage forms for stamping and registration.

The various banks have made rules governing the lending powers of their various managers, and set the limit for which they could lend free or clean of securities.

The give the rules the force of law, the various banking legislations provides that no official of a licensed bank shall grant any advance, loan, or credit facility to any person unless it is authorised in accordance with the rules and regulations of the bank and where adequate security is required by such rules and regulations, such security shall be obtained for the advance, loan or credit facility and shall be deposited with the bank.

The law therefore makes it mandatory for a manager or official of any bank to obtain securities for their lendings where the rules and regulations of their banks provide for this. The law also prescribes a penalty for non-compliance.

Bank Lending and Securities

One of the primary businesses of a bank is lending for private, commercial and public purposes. The money is usually lent out at an agreed rate of interest. It is at times secured and unsecured. But the law and the general practice is that lending must be secured. The security may be a form of personal guarantee or the security of property.

Lending generally entails making a formal request to the bank for a grant of loan or overdraft with a promise to pay back the principal with interest as and when due.

This may also happen at times, where a customer issues a cheque without adequate fund in the account and the banker honours the cheque. Here the customer is deemed to have taken a loan which he must pay back with the interest as the case may be.

It is however important to note that the usual practice in any negotiation for loans, advances and overdrafts, is for the bank to demand and accept one or more of the following as securities:

- (a) Landed property;
- (b) Life policy (insurance certificate);
- (c) Stocks, shares and debentures;
- (d) Mortgages of the co assets and debentures over the assets;
- (e) Hypothecation of goods;
- (f) Bills of sales;
- (g) Trust receipts;
- (h) Savings account and deposits.

Landed Property and Mortgage

Land, particularly developed land, has always been the most acceptable collateral for loans and advances in the banks. It has the characteristic and capacity to appreciate in value over time. Where land is been used as a security, the customer either leases his land, mortgages or gives the bank a charge over the land as the case may be. It is important to note here that the Land Use Act, prohibits alienation or disposal of land either by assignment, transfer, sublease or mortgage without the consent of the Governor.¹ The consent must have to be obtained before the mortgage² *Savannah Bank (Nig) Ltd. v. Ajilo* (1989).

It is also important to note the uncertainty surrounding the status of land in this regard because of the wipe powers available to the state under the Act. The Governor is empowered to revoke any statutory right of occupancy for overriding public interest. This may affect the interest of the bank adversely should it occur when the loan has not been fully repaid. It is also doubtful whether the state may wish to repay the loan in respect thereof.

Nature of Mortgage Transaction

Mortgage is the transfer of an interest in specific property for the purpose of securing the payment of a loan. The banker here is the *mortgagee* and the customer borrower is the *mortgagor*. It may be in form of a legal mortgage or

¹ LUA, 1978, S.1.

² *Savannah Bank (Nig.) Ltd. v. Ajilo* (1989) 1 NWLR (pt 97) 305

equitable mortgage. Apart from landed property, it covers such other properties like life policies, stock and shares and other chooses in action.

Legal Mortgage

It entails the transfer of the totality of interest in the property by some process of legal documentation. This requires complete transfer of the mortgage interest in the property to the mortgage subject however to the mortgagor's right of redemption upon full payment of the loan, i.e. the mortgagor's equity of redemption. The law is once a mortgage always a mortgage. The right to create the mortgage is however also subject to the consent of the Governor.

Once a legal mortgage is created, the mortgagee may:

- (a) take over possession of the property and direct the tenants therein to pay rent to him;
- (b) may appoint a receiver of the rents and profit accruing from the property.

These rights are usually exercisable when the mortgage is in default of his obligation to repay the loan. Furthermore, the mortgagee may sue the mortgagor for the principal sum and interest, or exercise the right of sale as the case may be.

When the mortgagee exercises, the power of sale, he must be cautious, honest and fair in the sale which must be by public action.

Equitable Mortgage

This is usually created by means of deposit of the title deeds with the mortgagee usually accompanied by a memorandum of deposit. Here the mortgagee cannot exercise any right of sale without perfecting the mortgage or through the order of court. A legal mortgage is preferred to equitable mortgage as a security for loan, as it has effective remedies than equitable mortgage.

Note that the same property has been mortgage for several loans and advances depending on the value of the property. This would involve the issue of priorities and preferences in the settlement of the debts and right of the various mortgagees over the property.

Mortgage of Life Policy

Life policy is a contract by which an insurer, in consideration of certain premium which might be paid in bank or instalment, undertakes to pay one person insured, or for whose benefit the policy is made a certain sum of money upon the death of the person whose life is insured or upon the expiration of an agreed period.

The holder can assign it to a bank – mortgage to secure a loan. As soon as the money is repaid the policy is reassigned to the holder. The notice of the assignment must be given to the insurance company.

The legal mortgagee can also sue in his own name.

An equitable mortgage of the policy can be created by mere deposit of the documents with the bank with the intention to give a security. In this case there must be memoranda of deposit.

Where a life policy has been used a security for a loan and the policy matures or the loan is not repaid, the security may be enforced in various way. It may either be through the surrender of the policy or through outright sale of the policy. The bank may also if it likes obtain a loan from the insurance company based on the policy as a security.

Where a life policy has been used a security for a loan and the policy matures or the loan is not repaid, the security may be enforced in various ways. It may either be through the surrender of the policy or through outright sale of the policy. The bank may also if it likes obtain a loan from the insurance company based on the policy as a security.

If it is an equitable mortgage of the policy, the cooperation of the holder or his representative would be required to realize the security.

Mortgage of Stocks and Shares

Stock and shares constitute important securities for bank advances. Such stocks and shares which are also “chooses in action”, may be quoted or unquoted at the stock exchange. Shares in private companies cannot be so quoted, however. As security also, a bank may take legal or equitable mortgages of them. Essentially, stocks and shares consist of rights to sums of money as represented by share certificates, debentures and bonds. A bank is precluded from granting any advances, loans, or credit facilities against the security of its own shares or unsecured advances unless authorized by its rules and regulations.³

Legal and equitable mortgage of stocks and shares

In effecting a legal mortgage the borrower transfers his share into the name of the lender bank or its nominee. Such a transfer shall however, be accompanied by a memorandum of deposit. Having been transferred into the lender's name, it is possible for the mortgage to exercise his rights, including of sale, whenever the time arises through default in payment of facilities granted.

As equitable mortgage is created by the deposits of the share certificate with the mortgagee accompanied by a memorandum of deposit formality is less cumbersome and expensive. The major limitation in this method is that, powers,

³ S.20(b) BOFID, 1991

including of sale, without the assistance of third parties especially the court unlike in a legal mortgage.

Trust Receipt

This is a document executed by the pledger of goods or the documents of title thereto. The arrangement is such that the documents are released to him by the banker so that the goods can be sold and the proceeds used in repaying the loan granted. It is simply a bailment of document of title to the pledge by the pledger coupled with an equitable assignment or charge by the pledger of the proceed of sale. This arrangement places the customer in the position of a trustee and agent for the banker. With this, it is possible for any person who has noticed for the trust receipt to pay direct the purchase money to the banker. Trust receipt serves to protect and preserve the banks rights when documents are handed over to the customer. Transaction by way of trust receipt has some obvious limitations:

- (a) A dishonest customer may divert any payment made to him for onward transmission to the banker, for his own use;
- (b) A banker is also susceptible to claims by third parties; hence the need for banker to exercise maximum caution in accepting trust receipt from any customers;
- (c) It is also important that the banker should ensure that it can exercise control both on the title documents to the goods as well as over the proceeds from the sale.

Bills of Sale

Bill of sale transaction is also another acceptable security for granting bank facilities. A bill of sale is an instrument in writing whereby a person transfers to another the property which he has in goods or chattels. It is also a document given with respect to the transfer of goods and chattels, used in cases where possession is not intended to be given.

Bill of sale may be by way of absolute or security bills. Under security bills, the chattel is transferred only as a security for some debts. The document must be prepared in accordance with the form in the schedule attached to the legislation⁴. The bill must also be registered within reasonable time of execution.

Company's Assets and Debentures

The assets of incorporated companies whether fixed or floating, are acceptable securities for bank lendings. Such assets may consist of machineries, plants, goods in transit and raw materials.

⁴ Bills of Sale Act (1882) UK

A company raises money for its activities by means of debenture. Debenture is simply a legal document acknowledging a company's indebtedness to some persons to a specified amount of money coupled with an undertaking to repay on a fixed date, the principal with the interest. It is usually given as a charge by way of security. These may be fixed charges or floating charges.

Fixed charge arises by way of a mortgage created over a specific property like land or buildings. The company is precluded from further dealings in such property until there is a release upon repayment. It requires registration.

Floating charge is an equitable charge. There is no restriction on any further dealings by the company on the property. Such charge may include moveable assets as well as fixed assets and the transaction would also require due registration. It is also possible, after some time for floating charge to become fixed upon some specific assets of the company.

Hypothecation of Goods

This is the process of pledging property as a security for debt. The transaction does not involve any physical transfer of goods nor is the lender given-title to the goods, although they retain the right to sell the pledged goods in case of default. This practice of hypothecation of goods entails a great risk to the bank hence the need to ensure that the transaction is well documented and policed.

The lender's risk arises from the fact that he has no actual or constructive possession of the goods and a borrower may deal with the goods fraudulently. Furthermore where a document or instrument requires registration under the Bill of Sales Act and this is not effected, the transaction would be void.

The general legal view is that the banker is not really protected in a hypothecation of goods transaction whereby goods are released to the customer on trust to sell and subsequently pay the bank. Such transaction may be prone to high level fraud.

Where a bank customer default in the payment of his debt when due, the bank may go to court and seek for the following order or orders as case may be:

- (a) use for the debt;
- (b) levy of execution on the debtor's property assets, usually in the form of a writ of "*Frieri Fiecas*" (Fifa);
- (c) declaration of bankruptcy; and
- (d) winding-up of a debtor company.

In order to recover a debt successfully, the bank must ensure that the account, has been left dormant for a period of more than six years or else the provisions of the status of limitations could be invoked and was the case in *National Bank (Nig.) v. Peters and Fetuga* (1971) as well as in *National Bank*

(*Nig.) Ltd. v. Adewale Thompson* (1962) where the bank lost its right of recovery of a debt on the ground that the debt was statute-barred.

Specific Securities for Bank Lending in Nigeria

- 1) Land
- 2) Insurance Policies
- 3) Stocks and Shares
- 4) Personal Guaranteed
- 5) Vehicles
- 6) Trust receipts etc.

Features/Virtues/Qualities of Good Banking Securities

- 1) Sufficiency
- 2) Objective and stable value
- 3) Easily realizable
- 4) Good title
- 5) Ease of assignment and discharge
- 6) Not onerous (undue liability or inconveniences on the bank)
- 7) Prime Assets (Assets the borrower holds in esteemed)
- 8) Legally lending and enforcement (not having loopholes that will affect legal assistance) (like guarantee that undue influence and misrepresentation that can be pleaded to enforce it).

Land

- i) The title to land may be evidenced by freehold conveyances, leases, assignment of freehold conveyances, or leases, certificate of occupancy or mere licence to occupy the land.
- ii) Prior to the Land Use Act coming into force in March 1978, the Nigerian land law recognized a deed of freehold conveyance, as conveying an estate in free simple absolute in possession to the holder, and the law permitted him to deal with it as he likes. For example, he could lease, assign, or mortgage.
- iii) The enactment of the Land Use Act by the Federal Military Government has brought some changes into the concept of land ownership in this country vis-a-vis bank security.
- iv) The vesting by the Act of all land comprised in the territory of each state in the federation in the Military Government. Later civilian Governor of the state, means that no individual, as from 29th March, 1978, the Commencement date of the Act, could have freehold interest in land.

- v) Such proprietary interest previously held before the commencement of the Act is converted to right of occupancy by the operation of law to the extent that it is not forfeited to the state.
- vi) Consequently, it is no longer appropriate to prepare freehold conveyances after the commencement of the Act.

The Following Classification Therefore Becomes Necessary

1) Conveyances, Leases, Assignment of Land Executed, Stamped and Registered Before 29th March, 1978

It is not mandatory for a person entitled to a right of occupancy in respect of land in an urban area to apply for a certificate of occupancy because a certificate of occupancy is not the only recognised document of title under the Act. It follows therefore that Deeds of conveyances, leases, and Assignment of property executed, stamped and registered before commencement of the Act are still acceptable securities.

2) Leases, Assignment of Property Executed, Stamped and Registered after 29th March, 1978

The above mentioned document would also constitute acceptable securities for bank loan provided the consent of the Governor is obtained to the transaction as provided in the Act.

3) Undeveloped Land as Security

In respect of an undeveloped land, the land to which the conveyance, lease or assignment relates should not exceed half hectare.

The word 'developed land' is defined under the Act as meaning land where there exists any physical improvement in the nature of road development, services, water, electricity, drainage, building structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purpose.

For the purpose of bankers and except in case of customary rights of occupancy for agricultural credit purposes, we should regard land as developed only where there is building on it, because a mere right of occupancy (without building) offers inadequate security under the Act.

4) Land in Urban and Rural Area

An urban area is defined by the Act as an area of a state designated as such by the State Governor (s.3 LUA 1978). Any part of the state not so designated is rural.

Until the advent of the Act, Lands in rural areas were generally not considered as good securities for bank loan for the following reasons:

- a) They are mostly owned by communities, villages, Clans or Families under customary law, and until there is effective partition, an individual member of such land owing community or families, or village could not legally mortgage or alienate his allotment of the communal land.
- b) They are seldom covered by documents of title which form the basis of bank securities.
- c) They do not command good, readily ascertainable and realizable security.

However times have changed with the introduction of rural banking and the Agricultural Credit Scheme by the CBN, land in the Rural Area has acquired some importance as bank security.

5) Statutory and Customary Right of Occupancy Distinguished

- a. A statutory right of occupancy is a right of occupancy granted by the Governor or arising in an Urban area by operation of the Act while a Customary right of occupancy is the right of a person or community lawfully using or occupying land in accordance with customary law and includes a right of occupancy granted by a Local Government in respect of land in the rural area.
- b. It is important to note that although both customary right of occupancy and statutory right of occupancy are creation of the Act, the customary right of occupancy is subject thereto by customary law.
- c. While a customary right of occupancy need not be for a definite term, a statutory right of occupancy must be. Lagos State 99 years, for Nigerians and 50 years for Foreigners.

6) Insurance Policies

- a. Under the Insurance Act, 1976, the law permits any registered insurance company to issue insurance certificates to the insured, either in respect of life policies, or fire policies or accident policies. It should be noted that however that generally only life policy is acceptable security for bank loan.
- b. The banker before accepting the insurance certificate as security must ensure not only that the insurance company issuing the certificate is registered under the Act, but that it has been alive to its responsibility by promptly honouring client's claims.

7) Permissible Features of Acceptable Insurance Policies

1. The insurance policy must have a surrender value (the amount of money payable when a policy is redeemed before maturity or death). The general

policy is that before a policy acquired a surrender value, annual premium must have been paid for two or three (3) years. And the amount of the surrender value is a percentage of the sums so paid. It might be prudent to ascertain the actual surrender value of the policy from the insurance company before the policy is accepted as security.

2. The assured age is admitted by the insurance company, because insurance companies usually make it a condition that they reserve the right to adjust the sum assured before paying upon a policy in the event of the age being incorrectly stated.
3. The policy is kept in force by the payment of the necessary premiums as and when they are due.
4. The policy holder must have an insurable interest in the subject matter of the insurance. An agreement to insure must satisfy all the requirements as to offer and acceptance, consideration, capacity and intention to enter into legal relationships.

However, even if these requirements are fulfilled, the contract may still fail if the policy holder has no interest which can be insured. This means, in the simplest terms, that the policy holder must be in position where they will suffer loss if the event which they have insured against occurs.

However, there is no single definition of insurable interest but the following covers its essential elements.

The legal right to insure arising out of a financial relationship recognised at law between the insured and the subject matter of insurance.

Key Elements

1. A subject matter of insurance
2. Policy holder must have an economic or financial interest in the subject matter of insurance.
3. The interest must be current interest, not merely an 'expectancy',
4. The interest must be legal.

It is a cardinal rule of insurance that the claimant on a policy must be able to show that the person on whose behalf it was made has an insurable interest in the property or person being insured.

- i) If the policy is taken out by a third party, the policy will be void unless the third party has an insurable interest, which must be a pecuniary one, in the life of the assured.
- ii) However, in the following categories of life assurance an insurable interest is presumed and need for proof of interest not required:

- a) Insurance of an individual on his life;
- b) Insurance by a woman on the life of her husband;
- c) Insurance of a man on the life of his wife.

Unless there is some pecuniary interest, a parent has no insurable interest in the life of a child, nor the child in the lives of its parent.

5. To give the bank a valid title, the banker should ensure that the beneficiary clause of the policy is amended to read that the sum payable will be paid to the assured, his administrators, executors and assigns.

Stocks and shares

- i) Stocks and shares in public companies are good securities for bank loan, provided they have been quoted on the stock exchange, in accordance with stock exchange regulations.
- ii) S.13(b) of the Banking Act 1969 precludes a bank from accepting its own shares as security for its loan.
- iii) Stock of non-quoted public companies is not accepted as security for loans because of the difficulty in determining their value.

Guarantees

A guarantee is a written promise by one person called the guarantor or surety, to be answerable for the debt, default or miscarriage of another person (principal debtor).

The liability of the guarantor or surety is both a dependent and secondary one. He is not liable if, for any reason, the contract between the principal debtor and the creditor is invalid, and his promise can be enforced against him only if the principal debtor, the person primarily responsible for payment of the debt defaults.

It follows from the above definition of a guarantee that a person cannot guarantee his own debt or that of his firm; he can of course guarantee his incorporated company, since such a company is a distinct entity in law.

- 1. Here the distinction between a guarantee and an indemnity is important. A person giving an indemnity assures a primary and independent liability.
- 2. Before accepting the guarantee of a person, it is essential for the banker to ascertain:
 - a. His financial position
 - b. Inquiring and opinion from his bankers to ascertain his suitability and credit worthiness for the amount of the guarantee proposed.
- 3. Provision should be made in the guarantee that the bank could determine or increase the credit facility to the borrower without recourse to the guarantor,

otherwise if the bank grant in excess facility above the amount guaranteed, the guarantor may on that ground deny liability⁵ (*ACB Ltd. v. Mohammed Khalil and Abdel Suleiman*) (1971)(1) NCLR 71

4. The importance of the guarantors' signature on the deed of guarantee to make it enforceable against him has well emphasized in the case of *Arab Bank (Nigeria) Ltd. v. Alhaji Aminu Dantata* (1977) 7. S.C. 33-44.

Categories of Guarantor

- 1) The wife as a guarantor:
 - a) A wife can guarantee a debt
 - b) Before execution of a guarantee, the banker should explain to the woman guarantor, the liability which she is undertaking.
 - c) To prevent allegation of undue influence, an independent legal advice should be sort before executing the guarantee for the account of her husband or a coy in which he is interest.
- 2) A minor as guarantor:
 - a) A person under twenty-one (21) years has in general no contractual capacity.
 - b) He cannot borrow money
 - c) Any contract for a loan of money to him is void and accordingly,
 - d) A guarantee given by an adult for such loan is void.
 - e) A minor cannot guarantee the debt of another person.

Perfection of Bank Securities

Introduction

- 1) The processes of perfecting bank securities depend on the type of security involved:
- 2) The process does not take too much time but it is advisable that between authorization of the credit slip, thorough investigation is carried out to determine the title to the customer to any property or asset offered as security.

1. Land

Investigation of title	Investigation by a lawyer of the title deed, and it is usually by a lawyer.
Necessary consent	That the owner has not already changed it in favour of other persons.

⁵ *ACB Ltd. v. Mohammed Khalil and Abdel Suleiman* (1971) (1) NCLR 71

Stamping	No encumbrances or encroachments exist with respect to the property or asset
Registration (registrable instruments) under the instruments Registration Act	Check through land registry, physical inspection of land. The solicitor should trace the customers' title down to the root of title prescribed by law. After obtaining possession of the customer's documents and genuineness satisfied, the necessary execution must be effected. Registration.

2) Guarantee execution/perfection procedure

- 1) a) It be executed by the guarantor before the bank official
- b) In case of an incorporated company:
 - i). MEMO and Article – whether the coy can guarantee
 - ii). Bound relationship authorizing guarantee
- c) If the guarantee is issued by an individual on behalf of the company, it should be ascertained whether the issue of the guarantee is prohibited by CAMA. Whether the guaranteed should be under seal or hand depends on the Articles of Association of the coy issuing the guarantee.

3) Stamping

- a. A guarantee under hand (individual and companies alike) should be dated at the time of its execution
- b. The guarantor (individual) or duly authorised signatories of a company should sign across the affixed stamp
- c. The guarantee should be witness by bank official.
- d. A guarantor under seal should be dated on execution and stamping effected within 30 days statutory period. Stamp duty of ₦3.00 is usually affixed by the commission for stamp duty.

4) Enforcement of Bank Securities

- a) The principal legal obligation of borrowing is the obligation of repay when due.
- b) A promise or undertaking to do so is implied in the contract of lending and is legally lending and enforceable against the borrower so long as the loan or credit facility remain unsettled.

- c) From the obligation to repay also arises the legal incident of debt, and the status of the borrower which survives his death and continues thereafter to bind his estate.
- d) This obligation operates strictly in personal and does not bind relations or other third parties unless they have entered into a sort of indemnity or guarantee to make themselves personally responsible for the payment of the debt, nor does the obligation to repay bind by its own force the property or assets of the borrower, unless they have been charged with the repayment of the debt.
- e) The death of a surety or the destruction of the property charged does not discharge the borrower from his obligation to repay.
- f) The first recourse of the lender is against him and not against the surety or the property charged as security. He is and remains the principal debtor, and security is only collateral to the obligation to repay.

Consequences of Default in Payment

- 1) It destroy the borrower goodwill with the lender, and with it his ability to get financial institutions to trust him with money in the future.
- 2) From the legal stand point, a defaulting debtor faces the embarrassment of action by the lender to recover his money.

Enforcing the Obligation to Repay

- 1) No commercial bank is ever eager to bring these consequences about, except as a last resort.
- 2) Banks are not keen in litigation, because the publicity is not good for business.
- 3) Engages in letters, reminders, etc.
- 4) Engages the services of debts collectors
- 5) Court Actions/Judgment debtors

Effect

- a) Imprisonment for civil debt
- b) Levy of execution on the debtors' property and assets:
 - i) For moveable property (the procedure is for the judgment creditor to take out a 'writ of attachment and sale' from the Court Registrar). Upon the issue of the writ and its service upon the judgment debtor, the sheriff will have the debtor's residence cordoned off.
 - ii) For immovable property, (the judgment creditor may apply to the Court) (not the registrar) for a writ of execution against any immovable property of the judgment debtor. The application must be supported by evidence

showing steps taken, effect, fact of lack of moveable or insufficiency of moveable property to satisfy the judgment debt.

- iii) Debt owing to the judgment debtor including money deposited in a bank, may be attached by means of a “garnishee order”. The procedure is for the judgment creditor to apply to the Court *ex parte* for a garnishee order. Notice of the application will then be given to the judgment creditor’s debtor (called the garnishee) within fourteen (14) days of the application been made. The garnishee cannot after the receipt of the notice repay the debt to the judgment debtor. If the order is eventually made, the garnishee must pay over the amount of the debt to the judgment creditor: execution may be levied against him if he defaults in doing so.
- c) Bankruptcy:
 - i) A bankruptcy petition
 - ii) The Court will present the debtors property and assets for the benefits of his creditors (by a receiving order).
- d) Winding-up of a debtor company
 - i) An insolvent company.

Chapter 8

Nature and Legal Effects of Bank Accounts, Banks' Mandates

Introduction: Opening of Accounts

The opening of accounts, either current or deposit, is through application in a prescribed form provided by the bank. The form of application is addressed to the bank in question, and it states in details the name or full heading of the Accounts, the address of the applicant; his occupation, full names of the signatories to the Account and their specimen signatures. There could also be a brief statement on the applicant's previous or existing bankers, if any, or whether he has never had any bank account before.

The form of application usually contains a brief letter of introduction by a third party who may be customer of the bank or another bank, confirming that he has known the applicant for a certain number of years and that he considers him to be *Honest, Trustworthy* and *Respectable*, (HTR) and that in his opinion he considers him a suitable person for whom the bank may properly open and conduct an account. *Such person normally states his own accounts, in addition, there must be two referees to the account.*

The bank to whom the application is made may thereafter proceed to seek information from the previous or existing bankers (if any) of the applicant, and the previous and existing bankers of the referees, to ascertain the prospective customers' suitability. When this is ascertained by favourable responses to the enquiries, then the bank could proceed to open an account in the name of the applicant, and issues him with cheque books.

Viewed under the law of contract, the application made by the impending customer constitutes an offer, and there is no acceptance until the bank agrees to accept the applicant as a customer by either issuing him with cheque books or accept the applicant's instruction to transact business on his behalf.

Whether a person is a customer of the bank or not depends on the nature of the transaction and the issue being raised for determination by the Court which

necessitates the establishment of an issue whether a banker/customer relationship has been established.¹

The law imposes a duty on the banker opening accounts for its customer to make sure that necessary references and banking procedures are followed in the opening of an Account, otherwise the bank exposes itself to the risk of being held liable for negligence where it collects fraudulent cheques for such customer.

In the case of *United Nigeria Insurance Co. v. Muslim Bank of West Africa Ltd.*,² the learned Justice had no difficulty in holding on Appeal, thus: “We consider that the learned trial Judge should not have rejected the allegations of negligence relating to the defendant’s failure to obtain necessary references and to follow necessary banking practice on the opening of an account.”

Although the banker is under a duty to pay out money on cheques drawn by its customer so long as there are funds to meet the demand for payment and that the bank cannot set off the claimer of a third party against its own customer, it has been held at the same time that if the bank has credible evidence that the money is obtained by fraud or breach of trust, the safest course for it is to refuse to honour cheques on so much of the money in question, and pay the money into the Court until the matter is referred to the Court by the parties concerned or by the bank itself asking for directions. Any other course will involve the bank with complicity in the theft of or fraud, or breach of trust as the case may be, and the bank will be liable to refund the money to the true owner on an action for negligence.³ (See *UBA v. Savannah Bank Ltd.* Suit N. LD/873/73 judgment delivered by Savage J. on 7th December, 1979). Also see *AG Northern Nigeria v. ACB Ltd.* (1964) 1 ALR 232

The Mandate

- i) The fundamental authority that constitutes the relationship or the basis of the relationship between the bank and its customer is the mandate.
- ii) There are set of instructions or binding rules that guide the relationship.
- iii) Technically we can also say that the documents with which the account is opened are also known as the customers’ Mandate.

Essential Requirements of a Banks Mandate

- 1) It must be consistent with legal principles (where the law requires a trustee or executors not to delegate unless in specific cases, a bank should not accept

¹See the case of *Woods v. Martins Bank Ltd, Ladbroke & Co. v. Todd*

² (1972) S.C. 69 (1968) NCLR 177

³ See *UBA v. Savannah Bank Ltd.* suit No. LD/873/73. See also *AG Northern Nigeria v. ACB Ltd.* (1964) 1 ALR 232

mandate where trustee or executors grant power of authority to a third party to operate the Account).

- 2) It must not be inconsistent with the customers' binding documents (e.g. where it is a club Account, constitution requires President/Treasurer to sign account, it must be so).
- 3) It must be in writing.
- 4) It must include appropriate signing powers.
- 5) It must be sufficiently clear, comprehensive and unambiguous. (name, address, occupation, etc.).
- 6) It must be done on bank's standard form.
- 7) It must be kept operating as long as the account is maintained and any change in the mandate must be duly approved by the necessary authority (for Ltd Company, it must be by board resolution).
- 8) It must give adequate protection to the bank (e.g.: Mandate for Joint Account and Partnership must include Joint and Several Liability Clauses and right of set-off). It must be legally water-tight to cater for future eventualities.
- 9) It must be kept under lock at all times so that it might not be tampered with.
- 10) Mandate are normally revoked on death, bankruptcy or lunacy of the customer; while events like garnishee orders, court injunctions, etc., may temporarily interface with mandate. (for a company liquidation revokes a mandate while mandate of a partnership is revoked on dissolution).
- 11) Obtaining a mandate from illiterate, it must be confirm with the provisions of the illiterate protection Act. (Illiterate Jurat).

Types of Accounts

1) Companies

Opening of an account of a limited liability company:

- a) Application in the bank's prescribed form
- b) Resolution of Board of Directors (BOD)
- c) Extract of resolution must indicate signatories
- d) Copy of Memorandum and Articles of Association
- e) Certificate of incorporation
- f) Information on shareholders
- g) Borrowing powers of directors

2) Federal, State and Local Government and Statutory Corporations

Accounts

- a) The bank is enjoined to study a copy of the financial instruction or financial memorandum published by the Government concerned. Or public finance laws and Acts.

- b) Authorization to open the account must be by the Accountant General.
- c) Overdraft of Accountant general's Account must be authorised by the Finance Commissioner.
- d) For statutory corporations, the law setting up the corporation must be seen by the banks.
- e) The borrowing powers of the statutory corporations
- f) In case of loans to State Government, it is desirable to ensure that it complies with the enabling laws.

Notes

- 1) If the government functionary exceeds the Powers entrusted to him by law in raising loan, then, so long as the amount of the loan is within his apparent authority, this cannot invalidate the transaction.
- 2) If the amount advanced is more than what the government functionary is authorized to raise under any of the relevant enactments or if the manner which amounts to a contravention of the relevant financial instructions. In such a situation the lending bank will be affected.⁴
- 3) The subsequent removal of a government functionary who made a request for loans or banking facility cannot invalidate the transaction.

3) Business Firm, Unincorporated Company, Partnership

- a) A search at the Ministry of Trade Business names registry to ascertain who the business partners are.
- b) Application for opening the account should be jointly signed and the account jointly operated if the business is carried on by more than one person because their liabilities are joint and several.
- c) Where the members appoint one of them to operate the account without restriction, his actions bind the firm.⁵

This should be distinguished from one where a partner in a firm opened the account singularly, and operated it alone without obtaining authority of the other partners, then the former partner would be held liable for the overdraft resulting from other operation of the account.⁶

4) Accounts of Clubs, Trade Unions and Voluntary Organisations

- 1) Procedure is similar to that of unincorporated firms
- 2) In all these cases a copy of the society's rules and regulations should be examined with particular reference to the powers of the executive members

⁴ *Royal British Bank v. Turquand*. 25 L.J. Q.B. 317

⁵ *ACB Ltd. v. Balogun* (1969) NCLR 176.

⁶ *ACB Ltd. v. Babafemi Ogunlade* 1969 NCLR 363

consisting of the president, the secretary and treasurer, and to any provisions regarding the signing of cheques.

- 3) A resolution opening account and confirming authority on the person to sign cheques should be passed by the Exco and extract of the copy from the minutes book certified by the president/chairman and secretary supplied to the bank.
- 4) Voluntary organizations such as clubs, trade unions and societies, which are not formally incorporated cannot be sued, neither are the individuals members who administer the funds personally liable for an overdraft provided that the members of the committee or council deputed to act on the account clearly sign cheques in their representative capacities and have not held themselves out as having authority to overdraft.

A banker therefore should obtain security, bearing in mind that if a guarantee is taken, it must cover the incapacity of the principal debtor.

- 5) Any request for a change of mandate should be accompanied by a resolution of the executive or the committee duly certified by the president or chairman and secretary.

5) Solicitors Accounts

- 1) Under sec. 15(1) of LPA 1962 the General Council of the Bar (otherwise known as the Bar Council) is empowered to make rules as to the opening and keeping by legal practitioners of account at banks for clients money and as to the opening and keeping by a legal practitioner who is the sole trustee or who is a co-trustee only with one or more of his partner, clerks or servant of an account at a bank for money of any trust of which he is the sole trustee or such a co-trustee as aforesaid, and to take such actions as it thinks necessary to enable it to ascertain whether the rules are being complied with in pursuance of these powers.

6) Clients' Account

- 1) The basic rule which a banker must assist the legal practitioner to observe is that all clients' money must be paid into clients Account and must not be mixed with the LP's own or paid into his account.
- 2) This means in practice that LP must keep at least two separate accounts:
 - a) Client's Bank Account (could be many clubs)
 - b) Solicitors' personal account

7) Administrator and Administrative of Estate Account

Trust Account

8) Joint Accounts

- Joint accounts could be defined as an account opened in the names of two or more parties, being persons other than trading partners, personal representatives or trustees.
 - The commonest type is that of husband and wife
 - Also where two or more people come together to open an account to enable them raise funds.
- a) Reference must be obtained for each of the account holders
 - b) Definition of signing powers
 - c) Mandate to establish joint and several liabilities and right of set-off.
 - d) Borrowing requires the consensus in writing of the joint parties.

Chapter 9

Bank Financing

Introduction

There are various and distinct ways in which bankers finance their customers. They include Banker's Commercial Credits, (letters of credit for international trades); Credit facilities – Overdrafts and Loans; Guarantees and Indemnities, Mortgage finances, Negotiation of bearer's bills, lending to corporate customers, agricultural credits guarantee to customers.

Banker's Commercial Credits

The object of banker's commercial credit is several. First, it enhances international trade and commerce by reducing the risk inherent in carrying large sum of money in different currencies from one country to another.

Secondly, it facilitates imports and exports by facilitating dealings between vendors and purchasers in different countries, by ensuring prompt payment to the vendor on the one hand and delivery to the purchaser of goods, the subject of the contract of sale, on the other hand.

Thus it ensure that the vendor remains in business since he does not have to wait a long time to get paid for his goods, and that the goods shipped to the purchaser, at least on paper, conforms with the expectation of the purchaser. The banker's commercial credit finances such a contract where there is likely to be substantial delay between delivery on board and arrival at the destination and thus ensure that capital in the form of the price of the good to be paid is not tied up during the period of shipment. The object and purpose of commercial transaction was explained in the well-known case of *Guarantee Trust Company of New York v. Hanney*,¹ per Scrutton L. J. by the English Court of Appeal:

The financing of trade means of banker's commercial credit is a device, which in its modern form has become an integral part of all banking systems worldwide.

In its earliest form a bank or firm of merchants authorized an intending purchaser of goods or a person who needed to raise money or incur debts in connection with the manufacture or sale of goods to draw bills of exchange on the bank or firm. The bank undertook to accept the bills when presented by the

¹ [1918] 2 K.B. 623

person in whose favour the credit was opened or by other persons to whom the bills were payable or to whom they were negotiated.

The objective of the banker's commercial credit is usually to facilitate commercial transactions between merchants separated in different countries by ensuring payment to the seller on the one hand and the delivery to the buyer of the contract goods on the other. It is therefore mostly employed in international commercial relations. Foreign trade tends to be financed more when there is mutual confidence among the trading parties. Where this mutuality is lacking and the need to provide guarantees and assurances exist then it becomes necessary to rely on the credit of a banker and trade is thus financed by documentary credits.

In broad terms, the method often employed in financing international commerce is to insert in the contract of sale a provision that payment of the price shall be made by a banker and preferably a designated banker in the seller's country. The banker, in other words, acting on behalf of the buyer either directly with the seller or through an intermediary bank in the seller's country assumes liability for payment of the price, in consideration, generally of the security afforded him by pledge of the documents of title to the goods or of his being indemnified in advance or an undertaking to reimburse, and of a commission. This mechanism of financing foreign trade ensured that the different requirements of diverse people in distance places are mostly met through international trade relations.

The importance of letters of credit was expounded by Onalaja, JCA in *African Continental Bank v. Eagle Pack (Nig) Ltd*,² where he observed as follows:

"The importance of letters of credit also called documentary credit are the most frequent method of payment for goods in the export trade that made Donaldson L.J. with the concurrence of Acknor C J said (sic) in *Intraco Ltd v. Notis Shipping Corporation of Liberia, The Bhoja Trader* (1981) 2 Lloyds Rep 256":

"irrevocable letter of credit and bank guarantees given in circumstances such that they are equivalent to an irrevocable letter of credit have been said to be the life blood of commerce. Thrombosis will occur if, unless fraud is involved, the courts intervene and thereby disturb the mercantile practice of treating rights there under as being equivalent to cash at hand."

Ordinary there are four principal parties usually engaged in banker's commercial credit transaction. These parties are the seller of the goods who is also known or referred to as the beneficiary of the credit. Second, is the buyer of the goods. Third, is the bank that issues the credit at the request of the intermediary

² (1995) 2 NWLR (pt 379) 590 at pages 614-615

bank in the sellers own country who guarantees to the seller that the issuing bank in the buyer's country is a reputable bank and will honour any bill of exchange drawn on it or accepted by it. This intermediary bank is thus a corresponding bank to the issuing bank. During the course of the transaction, this correspondent bank may assume the character of a *paying, advising, negotiating, or confirming* bank depending on what role its correspondent bank in the buyer's country requests it to play as between the seller and itself the issuing bank. For purposes of the ensuing accounts, the term "issuing" and "confirming" would be used to designate the banks which are parties to the contracts embodied in a commercial credit.

Definition

According to Pennington,³ a banker's commercial credit is an undertaking by a bank to pay a sum of money to the person to whom the credit is addressed, or to accept or purchase a bill of exchange drawn or held by that person. The undertaking contained in a commercial credit is either absolute, or more usually given on condition that, that person fulfils the requirement set out in the credit. Such conditions may for instance, include the presentation to the bank of documents showing that the goods have been supplied or shipped or dispatched by sea or any other mode agreed upon will be available for collection by the bank or someone nominated by it.

In *Union Bank of Nigeria v. Okwara*,⁴ Katsina-Alu, JCA, defined the banker's commercial credit in these terms: "A banker's confirmed credit in favour of a seller is an irrevocable promise by a banker to pay money to the seller in return for the shipping documents." In *Union Bank of Nigeria v. Sparking Brewries Ltd*⁵ it was defined as a modern device whereby the buyer requests his banker to open credit in favour of the seller and in pursuance of that the banker or his foreign agent, issues a confirmed credit in favour of the seller.

The basic tenor of the law and practice relating to commercial letter of credit is that parties deal in documents and not in goods and ship. In the system of documentary credit as the name implies the parties deal in documents not goods because the transaction involves more than one contract. There usually exist four autonomous though inter-connected contracts. The Supreme Court decision in the case of *Nasaralai v. Arab Bank*⁶ summarized the position as follows: there are usually four parties to the transaction. These are the buyer, the seller, the issuing

³ Pennington, et al., *Commercial Banking Law* (McDonald & Evans Estover Plymouth) 1978 1st ed. Page 309

⁴ (1998) 1 NWLR (pt 523) 118

⁵ (1997) 5 NWLR (pt 505) 344

⁶ (1986) 4 NWLR (pt 36) 409

bank and the confirming bank. The transaction between these parties usually involves four contracts:

First, is the sale of goods to the buyer by the seller;

Second, is the contract between issuing bank and the buyer for the opening of the letter of credit;

Third, is the contract between the issuing bank and the confirming bank for making payment to the seller; and

Fourth, the contract between the confirming bank and the seller concerning the document mentioned in the letter of credit.

These four separate though inter-connected contracts form the basis of any dealings in documentary letters of credit.

Bello, JSC (as he then was) sought in the same judgement to add a fifth contract in these words:

“I may add that in respect of letter of credit requiring a bill of lading, there is a fifth contract, which is of affreightment between shipowner and a shipper, i.e. the seller or his agent, by which a shipowner agrees to carry in his ship for reward the goods for which the letter of credit was issued and to deliver the goods to the buyer or his agent.”⁷

With respect, it is submitted that while the contract of affreightment may be in some way connected with the relationship between buyer and seller, it is strictly speaking outside the class of contracts falling within the ambit of letters of credit enumerated above.

Litigation arises more often than not from the contract entered into between buyer and issuing bank over whether or not the seller complied with the terms of the credit before the issuing bank made payment and consequently debit the buyer's account. This is not to suggest that as between buyer and seller there are no dispute whatsoever. Such direct buyer-seller dispute when they arise, fall outside the relationship between the issuing bank and the buyer who is mostly the issuing bank's customer.

Obligation of Issuing and Confirming Banks

A bank which issues or confirms a commercial credit becomes bound to accept or negotiate bills presented to it on demand or as is the case with documentary credits, on the fulfilment of conditions contained in the letter of credit once the beneficiary presents the bill. The terms of the credit including of course any conditions attached are ascertainable from the letter of credit alone. Thus, in

⁷ Ibid, at page 425

Attorney General of Bendel State v. United Bank for Africa Ltd.,⁸ Coker, JSC held as follows:

“The law as it stands is that as between the confirming bank and issuing bank as between issuing bank and buyer the contractual duty of each bank under a confirmed irrevocable credit is to examine with reasonable care all documents presented once the documents appear on their face value to be in accordance with the terms and conditions of the credit the confirming bank is obliged to pay the seller/ beneficiary by whom the documents were presented.”

The above view of the Supreme Court was re-echoed by the Court of Appeal in *Union Bank of Nigeria v. S. Ozezuah*,⁹ “The banker’s undertaking under an irrevocable or confirmed credit is absolute. An irrevocable or confirmed credit which has been advised to the beneficiaries cannot be cancelled at the instance of the buyers. The opening of confirmed letter of credit constitutes a bargain between the bank and the vendor of the goods, which imposes upon the bank an absolute obligation to pay.”

It is thus not possible to look beyond the express terms of the credit into the underlying contract or circumstances connected with the opening of the credit, in order to discover terms which could be imported to modify or supplement the express terms of the credit.

Certain conditions are usually expressed in a commercial credit which must be met by the seller/beneficiary in order to avail himself of the credit. The conditions usually stated in a commercial credit are that the seller must tender specified shipping documents related to a particular consignment. This consignment must be goods sold to a designated customer of the issuing bank within the period specified in the credit. Any failure could result in the bank refusing to take them up and to honour the beneficiary’s bill of exchange even though the exported merchandise tally with the specification in the underlying contract. The same rule will apply if even any variation between the description of them in the documents tendered and that contained in the credit are marginal and inconsequential in the circle of the concerned trade.

The justification for this rigid rule lay in the fact that the issuing bank is only entitled to debit the buyer’s account for the moneys it pay under the credit if it has strictly complied with its customers instructions evidenced by the application signed complied with its customers instructions evidenced by the application signed by him in connection with the opening of the credit. Any departure from those instructions without the customer’s consent results in a loss of the bank’s right to be indemnified by the customer. In the *Nsaralai case*, the apex court stated

⁸ (1986) 4 NWLR 547 at 538 see also *Akinsanya v. UBA* (1986) 4 NWLR (pt 35) 273

⁹ (1997) 2 NWLR (pt 485) 28 at 40-41. See also *Norskog & Co. v. National Bank* (1922) 10 Lloyds L.R. 625

that: “it is well settled that in opening a letter of credit, a bank has a duty to comply with the instructions of its customer.” Speaking specifically of the confirming bank, the court observed that:

It is trite law that an advising bank must act strictly in accordance with the mandate as contained in the letter of credit of the issuing bank and should not effect payment against documents which do not fully comply with the terms of the letter of credit.¹⁰

In *Bank Melli Iran v. Barclays Bank*,¹¹ the strictness with which the beneficiary is held to the literal provisions in the credit was emphasized beyond doubt. The defendant bank issued a credit to cover “100 new Chevrolet trucks” on the instructions of the plaintiff and paid the amount of the credit to the beneficiary against delivery of a bill of lading for “28 packages said to contain lorries and delivery notes for “100 new-good (as good as new) trucks.” It was held that the defendant bank should have rejected the documents tendered by the beneficiary because “as good as new” trucks were obviously not the same thing as new trucks. The decision in this case like that in the *Nasaralai* case commends itself as being correct on point of strict interpretation of the literal conditions appearing on the face of a letter of credit. To hold otherwise would leave room for sharp and dishonest practice by sellers who would like to substitute inferior quality goods for those contracted. Once conditions are satisfied the bank would be liable if it does not pay.

Other conditions usually contained in a letter of credit are that the shipping documents should be presented to the bank within the time limit specified in the credit. Similarly, any bill of exchange drawn under the credit should not exceed the amount of the credit. Whether a letter of credit is revocable or irrevocable it must state its expiry date as well as specify any last date for shipment of the goods in question. These requirements accords with standard provisions of the Uniform Custom and Practice for Documentary Credits as amended from time to time. The Uniform Customs Practice has uniform application among member countries of which Nigeria is one. With regards to ceiling on the amount of credit, the practice among Nigerian banks is to ask for a hundred per cent cash cover on the letter of credit to eliminate the risk of non-reimbursement by buyer on whose behalf the credit was issued.

Sometimes, a seller may also have to indemnify the bank to enable it pay on defective documents. Kerr, LJ *Banque de l'Indochine v. J. H. Rayner*,¹² referred to expert testimony which showed that majority of documents presented against

¹⁰ (1986) 4 NWLR (pt 36) at Page 430

¹¹ (1951) 2 Lloyds Rep 367; also *Midland Bank v. Seymour* (1955) 2 Lloyds Rep. 147

¹² (1983) 1 All E.R. 1137

letters of credits in London are defective in some respect. According to Tiplady,¹³ in practice British banks do not invariably reject defective documents, but have available a number of practical responses designed to keep matters moving as far as possible. They may, for instance, ask for authorization from the buyer to pay, despite the discrepancies. They may forward the documents to the buyer on a collection basis, thus, leaving the buyer's bank to decide on whether or not payment should be made after it has had opportunity to see the documents. For relatively minor errors the bank may take an indemnity from the seller, to cover any loss to the bank should the buyer reject the documents. For relatively minor errors the bank may take an indemnity from the seller, to cover any loss to the bank should the buyer reject the document. Finally, the bank may pay the seller under reserve'. The Court of Appeal in England considered the implication of a payment under reserve in the *J.H. Rayner case*. It was decided that a bank paying under reserve could insist on reimbursement from the seller if the issuing bank in the event rejected the documents for at least one of the reasons for which the confirming bank had first queried them. In the circumstances, it was further pointed out, it would not be necessary to show that the grounds of rejection were indeed valid.

A strict interpretation of the decisions of the apex court would leave no one in doubt that Nigerian banks should religiously stick to the terms of the credit. In *Attorney General of Bendel State v. United Bank for Africa (supra)* Coker JSC, referring to the appeal before the Supreme Court said: "In the instant appeal the documents presented by the beneficiary/seller were not in conformity with those expressly asked for under the mandate of the letter of credit and as such the issuing bank who accepted the faulty documents from BHF bank cannot debit buyer with the price paid."

Notwithstanding the above, the buyer (appellant) lost its appeal against the respondent bank's debiting its account because of great lapse of time in bringing action against the bank. The Supreme Court upheld the Court of Appeal's finding that the appellant received the seller's document against the letter of credit in July 1975 and did not reject them nor disclaim payment until February 1978. In the words of Coker JSC: "but the plaintiff's by sleeping on their rights have put themselves at a great disadvantage and as such they are estopped from claiming."

Should Nigerian banks however decide to adopt any of the practical steps in practice among British banks as outlined above, such bank may not altogether be left without defence especially where the buyer gives authority to the bank to pay despite the discrepancies. According to Coker, JSC, "When documents that do not

¹³ David Tiplady, *Introduction to the Law of International Trade* (BSP London 1989) 1st ed page 183

conform to the credit requirement are accepted by the buyer the bank is discharged from responsibility to him and he is relegated to his remedies against the seller.”

The same point was made by the Supreme Court in the *Nasaralai case*.

In *Gian Singh & Co v. Banque de L'indochine*,¹⁴ a case which was followed in *A. G. Bendel v. UBA (supra)*, the customer was held liable to reimburse the issuing bank which honoured a documentary credit upon the presentation to it of apparently conforming documents which turned out to be ingenious forgery by the seller. The consequence of this is that a bank is not obliged to establish the genuineness or truth of the representations in the documents presented to it. Its obligation is limited only to ascertaining that the documents are *ex facie* in conformity with the requirements of the letter of Credits stipulate that banks assume no liability or responsibility for the form, sufficiency genuineness, falsifications or legal effect of any document.

When a letter of credit stipulates the beneficiary must present his bill and the shipping document to the issuing bank or the confirming bank, or, in the alternative, where such beneficiary may avail himself of the credit, then presentation at the nominated place becomes a condition of the credit. If the credit merely provides that it shall be available to the beneficiary at a named place, it was held in *Midland Bank v. Seymour*,¹⁵ that the beneficiary is not bound to present the shipping documents there, but may present them and his draft for acceptance at any office of the issuing or confirming bank.

Deficiencies in Documents: Waiver and Indemnities

In *Nasaralai v. Arab Bank*,¹⁶ on the application of Nasaralai Enterprise Ltd; which was the buyer, the Arab Bank issued an irrevocable letter of credit to the Bank of Tokyo in Thailand on 15th December, 1978. In this letter, the Arab Bank instructed the Bank of Tokyo to pay the agreed price to world Grain Company Ltd, which was the seller on receipt from the said seller, documents drawn in conformity with the terms and conditions of the letter of credits. One of the terms was that rice should be put on board a ship on or before 15th October, 1978. The date was however changed to 15th November, 1978, because 30th November, 1978 was the expiry date for negotiating the letter of credit, the seller presented to the Bank of Tokyo a bill of lading and other documents showing that the rice had been loaded on board a ship called “M.V. Lucky Dragon” at the port of Thailand, on 15th November 1978. Relying on the documents the Bank of Tokyo paid the

¹⁴ (1974) 1 WLR 1234

¹⁵ (1955) 2 Lloyd's Rep 147

¹⁶ (1986) 4 NWLR (pt 36) 409

purchase price to the seller and advised the respondent (Arab Bank) of the payment. It also remitted the documents to the respondents. On 15th December, 1978 the managing director of the appellant, Alhaji Lamidi Popoola Accepted the documents on behalf of the appellant and authorised the respondent to debit the purchase to the appellant's account at Isolo branch with the sum of ₦778,607.97 in partial satisfaction of the purchase price.

The "M.V. Lucky Dragon" sailed from Bangkok in Thailand at the end of November 1978 with the consignment of rice and arrived Singapore in early December 1978 where it broke down and was ultimately sold as a scrap. The rice was discharged from the ship and stored at the Singapore Port Authority "Go Downs" (warehouses). The rice was expected to arrive Lagos by 27th December, 1978 but it did not do so up to March 1979. On 3rd March, 1979 the managing director of the appellant, Alhaji Popoola, went to Bangkok to investigate and from there he proceeded to Singapore where he found the consignment of rice stored. By an agreement dated 10th March, 1979 between Alhaji Popoola on behalf of the appellant and Hong Choon Hing Enterprises S.A; the latter agreed to tranship the rice to Lagos on board "M.V. Africa Phoenix". The rice was loaded on the ship which sailed from Singapore on 8th April, 1979 bound direct for Lagos. On its voyage, the "African Phoenix" also suffered misfortune, became unseaworthy and flooded. She was diverted to Port Elizabeth in South Africa and after some months delay the rice finally never arrived Lagos; being alleged lost.

The present appellant, who were plaintiff at the High Court sued the respondent/defendant and their case was that respondent bank was in breach of contract or negligent in that it failed to insert in the letter of credit as its terms and condition, appellant's instructions that the provision of the Decree that the ship, if not a Nigeria ship should not be more than fifteen years old; and that the respondent accepted documents which on their face were inconsistent with one another and with the letter of credit.

Apart from general denial, the main defence of the respondent was that the appellant has accepted the documents and thereby waived any breach or negligence of the respondent. The trial court found for the plaintiff/appellant and on appeal to the Court of Appeal reversed the decision hence the present appeal to the Supreme Court. The apex court found that the respondent was in breach of its obligations to the appellant by not inserting the provisions of the Decree in the letter of credit, and for accepting inconsistent documents. In the view of the Supreme Court, on account of respondent's default, the appellant had the right to reject the documents presented to it by the respondent on the two grounds of breaches of obligation or on either ground. On their rejection the appellant would have lost nothing from the transaction other than profit it would have earned if

the transaction had not aborted. However, the appellant did not reject the documents. He accepted them, whether this act of accepting was *estoppel in pais* or not, it does show that the appellant was given opportunity to object to the documents but there was approval instead. The Supreme Court thus dismissed the appeal.

The effect of acceptance of documents under the letter of credit as interpreted by the Supreme Court reveal then, that acceptance may amount to waiver or estoppel or both depending on the circumstance of each case. Waiver in its legal sense take place when a person with knowledge of a breach does an unequivocal act which shows that he has elected to affirm the contract instead of disaffirming it. On the other hand, the basis of estoppel by conduct is that a person has so conducted himself that it would be unfair or unjust to allow him to depart from a particular state of affairs which another person who would be affected by the departure has taken to be settled or correct. Viewed thus, the appellant's managing director, Alhaji Popoola so conducted himself that it would be unfair or unjust to allow him to depart from a particular state of affairs which another person, in this instance the respondent has taken to be settled or correct. Having earlier accepted the documents, he further went to Singapore where he took delivery of the rice and arranged for its trans-shipment to Nigeria. This conduct constituted waiver and estoppel either of which is a bar to any claim the appellant might have against the respondent. It is therefore in this light that the judgment of the Supreme Court must be appreciated as right and proper.

An issuing or confirming banker which accept a bill of exchange drawn under a letter of credit when the documents presented by the beneficiary fall short of the requirements of the credit, must be taken to have waived its right of objection. It cannot nullify its earlier acceptance or seek to recover from the beneficiary whatever amount it has to pay to the holder of the bill at maturity. The reasons that informed the decision in the *Nasaralai case* must be seen to apply here too. When an issuing or confirming bank accept the bill of exchange drawn under defective credit requirement it must be taken to have not only waived its right of objection, but to have conducted itself in a manner that it be unfair or unjust to allow it to revoke its acceptance. It must be remembered that the seller would have negotiated the bill of exchange to an innocent holder of value. The bank's acceptance therefore in such circumstance, must be taken to be settled and correct. According to circumstances, must be taken to be settled and correct. According to Pennington¹⁷ the bank cannot recover because the requirements of the letter of credit are merely conditions to be fulfilled by the beneficiary if he is to

¹⁷ Pennington, *et al.*, *op. cit.*, page 348

be in a position to compel the bank to accept bills drawn by him under the credit. The beneficiary does not impliedly contract with the bank, either when the credit is opened or when he presents documents under it, that the documents satisfy or will satisfy the conditions of the credit. Looking at the decision in the *Nasaralai case*, such a waiver by the bank will constitute a breach by the bank of its duty to its customer. The customer can thus disaffirm the transaction and the bank cannot debit his account with the amount paid out. However, this is essentially a domestic issue between the bank and its customer and does not in any way alter the bank's position vis-a-vis the beneficiary.

The decision of the House of Lords in the case of *Kwei Tek Chao v. British Traders and Shippers Ltd.*,¹⁸ leads to the conclusion that as regards the beneficiary of a credit, the bank's waiver binds the applicant for the issue of the credit because the bank acts as his agent. In that case it was held that the buyer may not refuse to accept delivery of goods in respect of which a credit has been issued by his bank on the ground that the shipping documents taken up by the bank did not conform to the credit. When the bank took up the documents it waived not only its own but also its customer's right of rejection.

On the face of it, the House of Lord's decision in the above case runs counter to that of the Supreme Court in the *Nasaralai case*. In the *Nasaralai case*, the Supreme Court made it clear that no account of the bank's default, the buyer had the right to reject that documents presented to it.¹⁹ Insufficiency or inconsistency of documents tendered under a credit should bind the customer only when he waives his right of rejection himself either expressly or by conduct amounting to estoppel. The bank should not be agent waiving on behalf of its customer, as it may not be in a position to grasp the intricacies of the transaction. A bank should strictly obey customer's instructions in connection with the credit. It is therefore submitted that the *Nasaralai case* was properly decided.

Rejection of Documents on Extraneous Grounds

Warranties by the Beneficiary

The decision in *Hamzeh Malas v. British Imex Industries*²⁰ highlighted that question of the bank's right to refuse to honour a beneficiary's draft drawn under a letter of credit on extraneous grounds, not connected with any breach of the conditions on which the credit was issued. In that case, a Jordanian firm ordered reinforced iron rods from a British supplier which was to be paid for by instalments under a letter of credit. After the first consignment was received and

¹⁸ (1954) 2 QB 459

¹⁹ (1986) 4 NWLR (pt 36) 409 of page 434

²⁰ (1958) 2 QB 127

was found to be of inferior quality the Jordanian firm, Hamzeh Malas, sought an injunction to restrain the issuing bank from making any other payments to the British firm under the credit. The court refused to grant the injunction on the ground that the breach of the underlying contract was a matter between the seller and buyer and that the bank was obliged as between itself and the beneficiary to honour drafts drawn upon it in pursuit of a credit once the documents tendered by the seller fulfils the terms and conditions under which the credit was issued.

The above decision was followed in the case of *National Bank of Nigeria v. Edo Textile Mills*.²¹ In that case the appellant bank's claim was for recovery of the amount paid to a foreign company for the supply of machinery for making carpets. It applied to the appellant for a banker's guarantee for the money required to cover the cost of the machinery and their installation by the foreign company. The application was approved and the banker's guarantee for the total amount requested by the respondent was given by the appellant through ten banker's drafts. After the first draft was paid the respondent refused to honour the remaining draft on the ground that the appellant had been warned not to pay in the other drafts as the machinery supplied by the foreign company was not of merchantable quality. The trial judge dismissed the appellant's claim. He held that the appellant's failure to produce the letter of guarantee or the irrevocable letter of credit had fatally affected their case. The appellant then appealed. For the appellant it was argued that the guarantee given to the quality of the goods. The issue of the quality of the machinery was a different agreement independent of the guarantee.

Relying on the authority of *Hamzeh Malas v. British Imex Industries*, the Court of Appeal allowed the appeal. It was held that a banker's guarantee is on the same ground as a letter of credit in regard to the settlement of a debt, and that the opening of an irrevocable letter of credit constitutes a bargain between the banker and the seller of goods which imposes on the banker an absolute obligation to pay irrespective of any dispute between the buyer and the seller in regard to the quality of the goods. The decision of the court makes it manifestly clear that the bank cannot refuse to honour a bill of exchange drawn by a beneficiary under a credit merely because the beneficiary has breached the underlying contract. This is irrespective of the fact that the buyer is in the circumstances entitled to reject the goods on grounds of non-conformity with the contract in term of description or quality.

Much of the litigations involving letters of credit arise over the conformity or otherwise of documents tendered by the seller. Difficulties also arise in connection

²¹ (1983) 1 FNR 536

with the bank's duty to its customer, the buyer of the goods. The bank will not as a rule be entitled to any indemnity unless it makes payment against stipulated documents or in compliance with other conditions laid down by the buyer. What then are the grounds on which the bank may be entitled to refuse payment outside any dispute arising in connection with documents?

Courts in all systems of law do not assist frauds or enforce illegalities. Thus, when the credit makes the bank's obligation to pay subject to the tendering of shipping documents, it contemplates the tendering of genuine documents under which the merchandise or its insured value may be taken delivery of, and not fake documents which will give no rights to the bank or the buyer against the owners of the ship or the insurance company. Although the issuing or confirming bank may refuse to accept the beneficiary's draft if he presents forged shipped documents, he gives no implied undertaking or warranty that the documents are genuine when he presents them and obtains acceptance of his draft by the issuing or confirming bank.²² Consequently, if the bank accepts or pays the bill of exchange drawn by the beneficiary, the bank cannot require him to indemnify it or the buyer against the loss they sustain when the shipping documents turn out to be forgeries.²³

The practice of Nigerian banks whereby they demand a hundred per cent cash cover as a means of indemnifying themselves against any payment on defective documents adequately takes care of such a situation. A seller intent upon committing fraud through the use of forged documents would not gain anything in view of the indemnity already provided to the bank. Furthermore, under the law of contract, a beneficiary who knows that the documents are forgeries when he presented them, should, by having deliberately induced the bank into thinking that they are genuine and thus make payment, be liable to the bank in damages for the tort of deceit. Recovery may also be based on the ground of money paid under a mistake of fact. It must however be pointed out that such liabilities of the beneficiary arise outside the relationship created by the credit opened and so have no effect on the validity of the bank's honouring of the beneficiary's bill by acceptance. The immediate consequence of this would be that should the beneficiary negotiate the bill of exchange to a holder after the acceptance, such a holder, if he is a holder for value, and possesses no knowledge of the fraud will become a holder in due course. A holder in due course acquires an overriding title and can recover from the bank in his own right. It will be no defence for the bank to plead that it is acceptance was induced by means of forged documents.

²² Pennington, *et al.*, *op. cit.*, pages 357-358

²³ See *Leather v. Simpson* (1871) LR 11 Eq 398; *Guaranty Trust Co. of New York v. Hannay & Co.* (1918) 2 KB 623

Additionally, the bank may dishonour the beneficiary's bill and resist payment while claiming rectification on the ground that the credit was issued by reason of a mistake common to both itself and the beneficiary. When this happens it will surely amount to rejection on extraneous grounds.

Finally, under the law of contract it is possible that the credit was issued by reason of the unilateral error of the bank such as where the bank inadvertently issues the credit in excess of the amount or limit of time in excess of that embodied in the sale agreement. In that case, if the seller knows of the mistake so that the draws against the credit *mala fide*, knowing of the discrepancy, the law then ought not to allow him recover. This is however a question belonging to the general province of contract law and not peculiar to the law of commercial credits.

Chapter 10

Loans, Overdraft and Interest: Legal Implications

Introduction

The first port of call that most people think about when trying to obtain finance is their own bank. Banks are very active in this market and seek out business to which they can lend money. Of the two methods of giving your finance, the banks, especially in small and start-up situations, invariably prefer to give you an overdraft or extend your limit rather than make a formal loan.¹

Where a bank advances credit or a loan to its customer, the court takes judicial notice of the fact that it is entitled to interest. This *mutatis mutandis* applies when the bank takes credit by way of deposit from its customers. It is this interest accruing to either the bank or its customer that the Central Bank of Nigeria by the provision of Section 15 of the Central Bank Act attempts to control.²

Banks are however, like every arm of our business section, called upon to refrain from unnecessary exorbitant interest rate charged.³

What is a Loan?

A loan is money that an organization such as a bank lends and somebody borrows.⁴

Who makes an offer and who accepts an offer in a loan agreement between a banker and its customer?

The banker makes the offer and the customer accepts the offer.⁵

¹ Hawsons Chartered Accountants, 'Bank Loans and Overdrafts' (<http://www.hawsons.co.uk>) <http://www.hawsons.co.uk/bank-loans-overdrafts/> Accessed 1st of January 2016

² U.B.N. Plc v. Ifeoluwa (Nig.) Ent. Ltd. (2007) 1 NWLR (Pt. 1032) 71 at 83

³ A.T. (Nig.) Ltd. v. U.B.N. Plc (2010) 1 NWLR (Pt. 1175) 360 at 385

⁴ *Oxford Advanced Learner's Dictionary* 8th Edition

⁵ *Faragol Instruments Ltd. v. National Bank of Nigeria* (1993) 1 NWLR (Pt. 271) 586

How does offer and acceptance arise in a loan agreement between a banker and its customer?

- i. An offer arises when the banker agrees to give the loan and send a letter or a loan agreement form containing the terms and conditions of the loan to the customer for completion and signature;
- ii. An acceptance is made when the customer agrees to the terms in the letter or agreement form, and expresses it by completing the form and signing it and returning same to the bank.

When is a contract of loan created in a banker and customer relationship?

A contract of loan is created between a banker and its customer when the banker makes the offer and the customer fully accepts the offer. In that case, the banker will be liable for damages in breach of contract should it fail or neglect to advance the loan to the customer in accordance with the terms of the contract.⁶

Is there a ground upon which the banker will be justified in law if it refuses to advance a loan to a customer in accordance with the terms of the Loan Agreement?

Yes. The banker's refusal to advance the agreed loan to the customer will be legally justifiable where the bank will show that the customer procured the agreement by fraud.⁷

What is an Overdraft?

An overdraft is created by allowing the account holder to withdraw a certain amount in excess of the amount standing to the credit of his current account.

It may be granted on an express request by the customer which may be expressly accepted by the Bank. Thus in *Re Horne*, Farwell, L.J. observe that: "*A payment by a bank under an arrangement by which the customer has an overdraft, is a lending by the bank to the customer of the money.*"

An overdraft may also be impliedly granted on an implied request. A practical example is a situation where a customer draws a cheque for a sum which is in excess of the amount for the time being standing to the credit of his account. This is in effect an implied request for an overdraft and if the bank honours his cheque totally, the customer has borrowed and the bank has lent the amount encompassed in the excess.

Thus in *Ayansina v. Co-operative Bank Ltd*,⁸ the Supreme Court held that since a banker is not bound to allow his customer to overdraw, a loan or overdraft

⁶ *Faragol Instruments Ltd. v. N.B.N* (supra)

⁷ *Bank of the North v. Idirisu* (2000) 3 NWLR (Pt. 649) 373.

is not granted as a matter of course but subject to an agreement, express or implied, from a course of business. In *Enahoro v. Bank of West Africa Ltd*⁹ the Supreme Court held that an entitlement to deduct interest on any loan or overdraft must be based on an agreement between the bank and its customer. Or on banker's custom this was approved in *Ayansina v. Co-operative Bank Ltd., supra*, where it was further stated that by the usual custom of banking, a banker has the right to charge interest, at a reasonable rate, on an overdraft and to debit the interest on the overdrawn account. It was held further, in *Union Bank Ltd. v. Sax (Nig) Ltd.*,¹⁰ that consent or prior knowledge of the customer is not required to debit his account with such interest.

Generally, overdraft by its nature is short term, non-specific and normally made available to meet general trading requirement.

An overdraft is seen in law as money lent by the banker to the customer. It is essentially the difference the amount available to the customer's credit and the actual drawings permitted him by the banker in excess of his credit balance on current account.

What is an EXPRESS OVERDRAFT?

An express overdraft arises where there is an express agreement between the banker and the customer following the customer's request for the grant of an overdraft facility by the bank.

What should an agreement for an EXPRESS OVERDRAFT contain?

An express overdraft usually include the terms of the overdraft such as the amount approved, the duration of the facility, the repayment period, interest chargeable, security for the overdraft and such other ancillary matters which both parties may decide upon.

What is an Implied Overdraft?

An implied overdraft arises where without prior arrangement to that effect, a customer draws a cheque in excess of his credit balance and the banker honours it.¹¹

Is the customer liable for the repayment of an IMPLIED OVERDRAFT?

The law is that where a customer of a bank draws a cheque when he has no sufficient funds to meet the withdrawal and the cheque is honoured by the bank

⁸(1994) 3 NWLR. 742

⁹(1971) 1 N.C.L.R 180 (187)

¹⁰(1994) 8 NWLR 150

¹¹ *Owoeye v. Wema Bank* (2002) 9 NWLR (Pt. 717) 1, see also *Union Bank v. Okubama* (2002) 14 NWLR (Pt. 688) 570

in spite of the insufficiency of funds, it amounts to an approval of overdraft which the customer is obliged to repay and which the bank can recover in a claim against the customer.¹²

What is the difference between an express and IMPLIED OVERDRAFT?

Whereas an express overdraft presupposes some form of prior negotiation and mutually stipulated terms between a banker and a customer, an implied overdraft arises spontaneously as where for instance, without prior negotiation or arrangement to that effect, a customer draws a cheque in excess of his credit balance and the bankers honours it.¹³

Can an overdraft facility be given to a customer who maintains either a savings or deposit account but does not maintain a current account with his banker?

It is a banking practice and convention which the law has recognized that an overdraft can be granted to a customer only on a current account. In *Barclays Bank v. Okenarhe* (1966) 2 Lloyds Rep 81 it was held that “an overdraft deposit account cannot exist in law.”

Is the banker under any legal obligation to grant an overdraft facility to its customer?

No, a banker is not under any legal or contractual obligation to honour a customer’s request for an overdraft. The choice to grant or not to grant an overdraft is entirely at the discretion of the banker and the banker may exercise this discretion by any of the following ways:

- i. Refusing to grant or honour the request for overdraft;
- ii. Honouring a customer’s cheque in excess of his credit balance without having any prior agreement or arrangement with the customer (implies overdraft); and
- iii. By entering into an express agreement with the customer to grant an overdraft (express overdraft).

It submitted that express overdraft is the best form of overdraft as it hardly gives rise to any dispute as to the terms and conditions upon which the overdraft facility is granted to the customer.¹⁴

¹² *Union Bank of Nig. v. Okubama* (2000) 14 NWLR (Pt. 688) 570

¹³ *Owoeye v. Wema Bank* (2002) 9 NWLR (Pt. 717) 1, see also *Union Bank v. Okubama* (2002) 14 NWLR (Pt. 688) 570

¹⁴ *BB Apugo & Sons Ltd v. ACB Ltd* (1989) ICLRQ 87

Does the law permit a banker to hold the money in a customer's deposit account as security for granting an implied overdraft to the customer?

Yes! In that case, the customer must be deemed to have consented impliedly to the banker holding the balance of his deposit account as security for his borrowing on current account.¹⁵

Is there need for a loan/overdraft transaction to be documented?

In modern banking, transactions are strictly documented and terms of transactions are explicitly stated. With regard to the grant of a loan and overdraft facility, there must be a letter of offer stating the terms of the facility granted, i.e. the interest rate, the duration of payment and the security for payment and there must be acceptance by the applicant accepting the terms as contained in the offer.¹⁶

What are the principles governing award of damages for breach of contract of loan?

If a person contracts to lend money, and then, in breach of contract, refuses or fails to advance the money, the borrower cannot sue for the money agreed to be loaned as debt, for this would be tantamount to a decree of specific enforcement and such a decree will not normally be granted for a contract of loan. But the borrower can claim damages for the failure to advance the money. The damages may, of course, be merely nominal but if expense has been reasonable incurred in procuring the loan elsewhere, that expense is recoverable as special damage, and so can any other loss which was within the contemplation of the parties. If the borrower can only procure the loan from other sources at a higher rate of interest than that agreed under the contract, and this was reasonably foreseeable at the time when the contract was made, it seems that the borrower can recover the additional interest he will have to pay as damages from the lender. If the borrower is unable to raise the money from other sources at all, and he is consequently unable to enter with or complete some transaction for which the money was required, it is theoretically possible that the lender might be liable for loss of profit on such a transaction or other consequential loss.¹⁷

¹⁵ *Allied Bank v. Akubueze* (1997) 6 SCNJ 166

¹⁶ *Alhaji M. U. and Sons Ltd. v. L.B.N. Plc.* (2006) 2 NWLR (Pt. 964) 288 and 297

¹⁷ *N.B.C.I. v. Integrated Gas (Nig.) Ltd.* (2005) 4 NWLR (Pt. 916) 617 at 650-651, see also Chitty on Contract, 23rd Edition, Volume 11, p.54, para 1106, see also Mayne and McGregor on damages, 12th Edition, p.553, paragraph 553

Meaning of Interest?

Interest as it obtains within the circle of banking institutions is the money payable by a banker to a customer for money deposited or as money payable to a customer to his banker for money had and received from the bank as loan, advances or any other related banking transaction.¹⁸

What is the basis for the award of interest?

The basis for award of interest could be the fact that the bank has been kept out of his money for a period and the bank customer who had use of the money for himself ought to compensate the bank for the deprivation.¹⁹

Does the central bank of Nigeria have the power to control interest rate chargeable by banks?

Yes, the Central Bank of Nigeria has the power to control the interest rate chargeable by any bank.²⁰

Are banks under a duty to charge interest rates in accordance with the central bank of Nigeria guidelines?

Yes, section 15 of the Bank of Act 1969 mandates all licensed banks to charge interest rates on advances, loans, credit facilities or deposits in accordance with the Central Bank of Nigeria guidelines on minimum and maximum rates of interest.²¹

Does the decisions of the central bank of Nigeria on interest rates bind the court?

No, the decisions of the Central Bank of Nigeria do not constitute a binding precedent on the Court.²²

Why don't the decisions of the Central Bank of Nigeria bind the courts?

The decisions of the Central Bank of Nigeria do not bind the Courts because CBN is not one of the Courts established under chapter VII of the Constitution of the Federal Republic of Nigeria.²³

¹⁸ *F.B.N. Plc v. Songonuga* (2007) 3 NWLR (Pt. 1021) 230 at 279

¹⁹ *M.H. (Nig.) Ltd. v. Okefiena* (2011) 6 NWLR (Pt. 1244) 514 at 533, see also *International Offshore Construction Ltd. v. S.L.N. Ltd.* (2003) 16 NWLR (pt. 845) 157, see also *Kano Textile Printers Plc. v. Takur* (1999) 3 NWLR (pt. 589) 78, see also *Habib (Nig) Bank Ltd. v. Ochete* (2001) 3 NWLR (pt.699) 114

²⁰ Banking Act, Cap 28, Laws of the Federation of Nigeria, 1990, s 15, see also *Union Bank of Nigeria v. Albert Ozigi* (1994) 3 NWLR (Pt. 333) 385, see *U.B.N. Ltd. v. Sax (Nig.) Ltd.* (1994) 8 NWLR (pt. 361) 150

²¹ *U.B.N. Plc. v. Ajabule* (2011) 18 NWLR (Pt. 1278) 152 at 186, see also the Revised Guide to Bank Charges 2013, issued by the Central Bank of Nigeria, to serve as a regulation on applicable charges for banking services and products offered to customers.

²² *Okoro v. Okoro* (2010) 2 NWLR (Pt. 1177) 198 at 211

Can a bank vary an agreed interest rate where there is no provision for variation?

Where the terms of the agreement between the bank and the customer are clear with regards to the agreed rate of interest and there is no provision for variations, the bank cannot vary the agreed interest rate to accord with the guidelines of the Central Bank on interest rate.²⁴

What is the attitude of the law to arbitrary charges by banks on the accounts of their customers?

The law will always frown at any arbitrary charges by banks on the account of their customer.²⁵

Can interest be payable on a debt or loan in the absence of express agreement?

The general rule at common law is that, interest is not payable on a debt or loan in the absence of express agreement or some course of dealing or custom to the effect.²⁶

Thus, interest will however, be payable where there is an express agreement to that effect and such an agreement may be inferred from a course of dealing between the parties²⁷ or where an obligation to pay interest arises from the custom or usage of a particular trade or business like in banking.²⁸

Can a bank still charge interest where there is no express agreement as to the rate of interest payable?

Where, as between a banker and the customer borrower there is no express agreement as to the rate of interest payable, the bank is entitled to charge interest rate on the basis that there is an established custom to that effect or that the customer has implied consented where, without protest, he allowed his account to be debited with such interest.²⁹

²³ *Okoro v. Okoro* (2010) 2 NWLR (Pt. 1177) 198 at 211

²⁴ *U.B.N. Plc. v. Ajabule* (2011) 18 NWLR (Pt. 1278) 152 at 186-187

²⁵ *U.B.N. Plc. v. Ajabule* (2011) 18 NWLR (Pt. 1278) 152 at 187

²⁶ *London, Chatham and Dover Railway Company v. South Eastern Railway Company* (1893) A.C. 429.

²⁷ *In Re Duncan and Co.* (1905) 1 Ch. 307

²⁸ *Allotrin Ltd. (The Owners of M V Fotini) v. The Attorney General of the Federation and Anor.* (1996) 9 NWLR (Pt. 457) 634 at 638; (1996) 12 SCNJ 236, see also *Diamond Bank Ltd. v. PLC. Ltd.* (2009) 18 NWLR (Pt. 1172) 67 at 9 - 97

²⁹ *Ilokson and Co. (Nig.) Ltd. v. U.B.N. Plc.* (2009) 1 NWLR (Pt. 1122) 276 at 314

Is a bank under a duty to charge interest at a reasonable rate on all overdrafts?

Yes, a banker has the right to charge interest at a reasonable rate on all overdrafts.³⁰

When is compound interest on overdraft chargeable?

Compound interest on an overdraft is chargeable only where the customer has agreed to it or where he is shown or must be taken to have acquiesced in the account being kept on that basis.³¹

When is compound interest on loans or other advances chargeable?

A bank has power to charge compound interest on loans or other advances granted to a customer even where there was no express agreement on the rate of interest to be charged. This is because the customer is taken to impliedly consent to an interest to be charged to his account.³²

Can the general rules of banking relating to charging interest over-ride the express agreement of the parties?

Where the parties expressly set out the details of the terms that would govern the loan facilities granted, then they have by implication made it clear that the transaction is not to be governed by the general rules of banking relating to charging interest on the loan or overdraft facilities.³³

Does a bank have a right to continue charging interest on overdraft though customer's account is dormant?

A bank customer who takes an overdraft facility and fails to pay back as per the terms of the grant and at the same time refuses to even operate he account thus causing the account to remain dormant, cannot, complain as to interest charged during the period the account remains dormant, this is so because, first, the bank did not cause the account to remain dormant and secondly, it is well settled that by practice, usage and custom of banking, banks do charge interest on loans and overdraft granted by them to their customers.³⁴

³⁰ *Bower v. Turner* (1863) 32 L.J. Ch. 54, see also *Abdullahi v. Waje Community Bank* (2000) 7 NWLR (Pt. 663) 9, (2000) 2 NBLR 200 and *U.B.N. Ltd. v. Sax (Nig.) Ltd.* (1994) 8 NWLR (Pt. 361) 150 SC

³¹ *Rickett v. B.W.A. Ltd.* (1960) 5 FSC 113, 118; (1960) SCNLR 227, see also 2 Halsbury Laws of England, 3rd Edition 229

³² *Adetoro v. U.B.N. Plc* (2008) 13 NWLR (Pt. 1104) 255 at 296, see also *Hausa v. F.B.N. Plc* (2000) FWLR (Pt. 29) 2561, (2000) 9 NWLR (Pt. 671) 4; *Barclays Bank D.C.O. v. Hassan* (1961) All NLR 836

³³ *I.D.S. Ltd. v. A.I.B. Ltd.* (2002) 4 NWLR (Pt. 758) 660; *Barclays Bank Ltd. v. Abubakar* (1977) NSCC 415

³⁴ *U.B.N. Plc. v. Lawal* (2008) 7 NWLR (Pt. 1087) 613 at 632

Is the bank entitled to continue charging interest on overdraft after expiry date?

No, a bank is not entitled to continue charging interest after the facility expires as the indebtedness cannot be treated as an overdraft after the expiry date.³⁵

Would the bank be entitled to damages once the overdraft expires?

Yes, the bank will be entitled to damages for breach after the debt is due.³⁶

Can a mortgage bank vary interest rate?

Yes, a mortgage bank is at liberty to vary the interest rate from time to time.³⁷

What happens when a customer who receives a statement of account from the bank fails to complain about wrong entries?

A party will be deemed to have accepted the rate at which interest on a bank overdraft was calculated if he received from the bank periodic statements of account in which the interest charges was shown as a debit and he did not dispute the account as shown by the statement.³⁸

When can interest be claimed?

Interest may be claimed where it was contemplated by the agreement between the parties or under a mercantile practice or under a principle of equity such as breach of fiduciary relationship.³⁹

Interest may also be awarded where there is a power conferred by statute to do so in exercise of the Court's discretion.⁴⁰

What is a bank required to prove in order to succeed in a claim for interest?

A bank, in order to succeed in a claim of interest must show how the entitlement for such interest arose, i.e. whether by law, by contract or agreement, or plead facts showing that the claim is part of the lost or special damages which the bank customer's wrong does imposed on him. It is not enough to merely say that the bank is claiming interest. The basis of the claim for interest must be made manifest on the pleadings.⁴¹

³⁵ *Airoe Construction and Civil Engineering Ltd. v. University of Benin* (1985) 1 NWLR (Pt. 2) 287

³⁶ *Airoe Construction and Civil Engineering Ltd. v. University of Benin* (1985) 1 NWLR (Pt. 2) 287

³⁷ *Ogunlade v. F.M.B. (Nig.) Ltd.* (2007) 2 NWLR (Pt. 1017) 16 at 32

³⁸ See *Thor Ltd. v. FCMB Ltd.* (2005) 14 NWLR (Pt. P46) 696 at 717, see also *Barclays Bank D.C.O. v. Hassan* (1961) NLR 836.

³⁹ *Ekewunife v. Wayne (West Africa) Limited* (1989) 5 NWLR (Pt. 122) 422 at 448, see also *Himma Merchant Limited v. Alhaji Aliyu* (1994) 5 NWLR (Pt. 347) 667, (1994) SCNJ 87 and *UBN Ltd. v. Sax (Nig.) Ltd.* (1994) 8 NWLR (Pt. 361) 150.

⁴⁰ *U.B.N. Plc. v. Lawal* (2008) 7 NWLR (Pt. 1087) 613 at 632

⁴¹ *S.A.F.P. & U. v. U.B.A. Plc* (2010) 17 NWLR (Pt. 1221) 192 at 201, see also *Ekewunife v. Wayne (W.A) Ltd.* (1989) 5 NWLR (Pt. 122) 422 at 445, see also *R.C.C. Nig. v. R.P.C. Ltd.* (2005) 10 NWLR (Pt. 934) 615, see also *Ekpan and Anor, v. Uyo* (1986) 3 NWLR (Pt 26) 63, see also *Udechukwu v. Okuka* (1956) 1 FSC

In other words, where interest is being claimed as a matter of rights, the facts of the entitlement must be pleaded by the bank followed by evidence to establish same. It is only when the Court is satisfied, after reviewing the pleadings and evidence that it may award same.⁴²

Is there a duty on a party claiming interest to plead and prove his entitlement thereto?

A party who claims interest has the duty to plead and proffer credible evidence in proof thereof.⁴³

Can court take judicial notice of bank rate issued by the Central Bank of Nigeria?

No, bank rate, issued by the Central Bank of Nigeria is occasional circulars is not a matter that a Court will take judicial notice of under the Evidence Act. There must be evidence of it.⁴⁴

Is a party who claims interest under a duty to produce Central Bank Guideline relied upon in evidence?

The Central Bank of Nigeria from time to time prepares a list of charges, guidelines, and policy pursuant to powers vested in it by Section 15 of the Banking Act. These policy documents are commonly referred to in the banking community as Central Bank Guidelines. They are not subsidiary legislations and do not fall into the class of documents the Court must take judicial notice of. Any Central Bank guideline relied upon must therefore be proved in evidence by producing same in Court.⁴⁵

Who can tender evidence of bank rates issued by the Central Bank of Nigeria?

Such evidence can only be properly tendered by an expert knowledgeable in that field who can be cross-examined on his or her evidence.⁴⁶

When does a customer's liability to pay interest on a loan arise?

A customer's liability to pay interest on a loan arises when the contract of loan is fully created and the bank has advanced the loan to the customer.⁴⁷

70 at 71, see also *London, Chatham and Dover Railway v. S.E. Railway* (1893) A.C. 429 at 434, see also *Barclays Bank D.C.O. v. Yesufu Alabi Adigun* (1961) All NLR 536

⁴² *S.A.F.P. & U. v. U.B.A. Plc* (2010) 17 NWLR (Pt. 1221) 192 at 201, see also *U.B.N. Plc v. Scopk (Nig.) Ltd.* (1998) 12 NWLR (pt. 578) 439 at 475

⁴³ *Ishola v. Societe Generale Bank (Nig.) Ltd.* (1997) 2 NWLR (Pt. 488) 405, see also *Ekwunife v. Wayne supra*, *Barclays Bank of (Nig.) Ltd. v. Abubakar supra*.

⁴⁴ *Daniel Holding Ltd. v. U.B.A. Plc.* (2005) 13 NWLR (pt. 943) 533 at 552

⁴⁵ *H.N.D. Ltd. v. Gifts Unique (Nig.) Ltd.* (2004) 15 NWLR (Pt. 896) 408 at 428

⁴⁶ *Council, F.U.T.A. v. Ajidahun* (2012) 14 NWLR (pt. 1321) 583 at 609.

⁴⁷ *Faragol Inst Ltd. v. N.B.N.* (1993) 1 NWLR (pt. 271) 586

Are bank customers under a duty to repay their loans timeously?

Yes, bank customers should endeavour to honour their obligation under their loan/contractual agreements so as not to be subjected to arbitrary interest rates.⁴⁸

Where an agreement for loan or overdraft between a banker and its customer lacks express interest rate, is the banker permitted in law to charge interest on such loan overdraft agreement?

Yes. The law recognizes that in the normal banking practice and in consonance with the universal custom of banking, it is an implied term of loan or overdraft agreement between the bank and its customers that a reasonable interest will be charged where no interest rate is expressly agreed upon.⁴⁹

Is the customer liable to pay interests on an Implied Overdraft?

Yes! The law is that an implied overdraft is regulated by the current prevailing terms of the bank by this, it mean that the customer is deemed to acquiesce in the application to him of those terms governing lending rates and such other conditions concomitant with the granting over draft as at the date.⁵⁰

Where does limitation period for recovery of bank loan begin to run?

In actions for the recovering of a loan, time starts running when a demand for payment is made in writing.⁵¹

When does a right of action to sue on an overdraft arise?

Where an overdraft is granted by a bank, the cause of action should not be deemed to have arisen until there has been a demand made or notice given. This is so because it is an implied term in a relationship action for the payment of an overdraft until there has been a demand made or notice given. The cause of action does not arise until the demand is made or notice given. In short, it is only logical to say that a demand was to be made before the cause of action arises.⁵²

Distinction between “Joint” as well as ‘Joint and Several’ Liability

In case of Joint Liability only one action is available and if judgment proves unsuccessful, or if a party is omitted from the action, further actions are barred. A

⁴⁸ *A.T. (Nig.) Ltd. v. U.B.N. Plc* (2010) 1 NWLR (Pt. 1175) 360 at 386

⁴⁹ *Farogol Instruments Ltd. v. National Bank of Nigeria* (1994) 1 NWLR (pt. 271) 586, see also *Bank of the North v. Idirisu* (2000) 3 NWLR (pt. 649) 373

⁵⁰ *Rickett v. Bank of West Africa* (1960) 5 FSC 113

⁵¹ *F.B.N Ltd. v. Moba Farm Ltd.* (2005) 8 NWLR (Pt. 938) 492 at 519, see also *U.B.A. Ltd. v. Machael O’ Abimbolu and Co.* (1995) 9 (NWLR) (Pt. 419) 371

⁵² *Amede v. U.B.A.* (2008) 8 NWLR (Pt. 1090) 623 at 658, see also *Angyu v. Malami* (1992) NWLR (Pt. 264) 242

right of set-off does not exist against credit private accounts, even on the determination of the Joint Mandate.

The death of one party to a joint account completely releases his estate. In the case of a 'joint and several liability, a right of action against all parties severally and successively is afforded. Until the whole debt is recovered, in addition, a right of set-off exists between credit private accounts and the joint overdraft.

On determination of the mandate, and death does not release the estate of the deceased for debts owing on joint account except that the account must immediately be stopped on notice of the death.

Types of Account Holders

- a) Married women
 - i) Has capacity to open, hold property contract, action in torts also liable.
 - ii) In opening account: ascertain relevant information
 - iii) In changing her property to secure account of 3rd party, independent solicitor's advice is required.
- b) Minors or Infants operates an account once it is under 21 yrs, limited contract capacity in law.
- c) Minor or infants as co-operator of a partnership account
- d) Minor or infants as party to joint account.

Chapter 11

Banks and Garnishments

The term garnishment denotes a judicial proceeding wherein a creditor (or potential creditor) prays the Court to order a third party to turn over to the creditor any of the debtor's property (e.g. wages or bank accounts) held by the third party (usually a bank). A garnishment proceeding is usually resorted to as a means of either prejudgment seizure or post judgment collection.

Garnishment is an inquisitorial proceeding, affording a harsh and extraordinary remedy. It is an anomaly, a statutory invention *sui generis*, with no affinity to any known to common law. It is a method of seizure; but it is not a levy in the usual acceptance of that term. It is a proceeding by which a diligent creditor may legally obtain preference over other creditors.¹

Meaning of Garnishee Proceedings

A garnishee proceeding is a means of collecting a monetary judgment against a judgment debtor by ordering a third party (the garnishee) to pay money otherwise owed to the judgment creditor, directly to the judgment creditor.²

In *U.B.N. Plc. v. Boney Marcus Industries Ltd. and Ors.*, garnishee proceeding was defined as a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which form part of his property available in execution. It is in the hands of a third party (the bank), whereby, a court order is required to direct the third party to pay directly to the judgment creditor.³

What is the nature of Garnishee Proceedings?

A garnishee proceeding is a proceeding *sui generis* and is unlike other proceedings for enforcement of judgments. It is provided for in the Sheriffs and Civil Process Act and the Judgment Enforcement Rules made pursuant to the Act. It is another process different from writ of execution whereby the judgment creditor can

¹ *Fidelity Bank Plc. v. Okwuowulu* (2013) 6 NWLR (Pt. 1349) 197 at 221

² *Fidelity Bank Plc. v. Okwuowulu* (2013) 6 NWLR (Pt. 1349) 197 at 212

³ *U.B.N. Plc. v. Boney Marcus Industries Ltd. and Ors.* (2005) All FWLR (Pt. 278) 1037 at 1046 – 7 SC; (2005) 13 NWLR (Pt.943) 654

realize the fruits of his judgment. If the judgment creditor knows that the judgment debtor has an amount of money with any Bank or institution, he will as Garnishor file an ex parte application to be supported by an affidavit in Form 23 of the Judgment Enforcement Rule (JER) for an order that the Garnishee (the bank) shall show cause why he should not pay the amount due to the judgment debtor to him.

These proceedings are strict ex parte between the Garnishor (judgment creditor) and the Garnishee (the bank or institution). Where the Court grants the order nisi on the garnishee, the Registrar through the Sheriff of the Court must serve on the garnishee, the judgment creditor and the judgment debtor the Order Nisi on Form 26 of JER. The registrar must then fix a date not less than 14 days after the service of the order nisi on the judgment creditor, the judgment debtor and the garnishee for hearing. This subsequent hearing envisages a tripartite proceeding in which all interests are represented. That is when the judgment debtor has the opportunity to convince the Court to discharge the order nisi by filing affidavits to that effect. After that hearing on notice, the Court may discharge the order or make it an order absolute.⁴

Who are the parties to garnishee proceedings?

It is trite that a garnishee proceeding is strictly between the judgment creditor and the garnishee (the bank).⁵

What are the stages of garnishee proceedings?

A garnishee proceeding can be described in two stages: the first stage is the process of getting order nisi. The order nisi directs the garnishee (the bank) to appear in court on a specified date to show cause why an order should not be made upon him for payment to the judgment creditor the amount of the debt owed to the judgment debtor. This is usually done ex parte and limited to the judgment creditor and the court.

The second stage is where on the return date, the garnishee bank does not attend, or does not dispute the debt claimed to be due from him to the judgment debtor, the Court may subject to certain restrictions, make the garnishee order absolute under which the garnishee (the bank) is ordered to pay to the judgment creditor the amount of debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment debt together with the cost of the proceedings and cost of garnishee. This later proceeding is tripartite between the

⁴ *N.A.O.C. Ltd. v. Ogini* (2011) 2 NWLR (Pt. 1230) 131 at 152 – 153, see also *Purification Techniques (Nig.) Ltd. v. A.-G., Lagos State* (2004) 9 NWLR (Pt. 879) 665 at 678 – 679 see *Hon. Justice Sotonye Denton West v. Chief (Iche) Chucks Muoma*, SAN (2008) 6 NWLR (Pt. 1083) 418 at 442

⁵ *F.G.N. v. Interstella Comms. Ltd.* (2015) 9 NWLR (Pt. 1463) 1 at 33

judgment debtor, judgment creditor and the garnishee (the bank). This is because on the return date all parties must have been starved and given an opportunity to dispute liability or pray that the order nisi be discharged for one cause or the order.

The garnishee (the bank) may dispute his liability to pay the debt; He will appear in Court on the return date and dispute his liability by denying indebtedness to the judgment debtor. He must make out a *prima facie* case in favour of an order for an issue to be tried.⁶

What is the effect where a garnishee disputes liability?

If the garnishee (the bank) appears and disputes his liability, the Court, instead of making an order that execution shall issue, may order that an issue or question necessary for determining his liability be determined or tried in any manner in which an issue or question in any proceeding may be tried or determined, or may refer the matter to a referee.⁷

What is the procedure for determining liability of the garnishee bank who disputes claim?

Order 8 rule 8 (2) of the Judgment Enforcement Rules (JER) sets out how the court session is to proceed to determine the issue of liability of the garnishee bank who disputes the claim. The proper procedure is for the Court to stand down the proceedings in respect of the issue of whether to make the order absolute and order that the Court would now proceed to try the liability of the garnishee (the bank).

If the Court makes such an order, it directs which of the three parties to the proceedings and any other person claiming interests or lien on the debt shall be plaintiff and which shall be defendant in the proceedings for the trial or determination of the issues.

Can garnishee order absolute be appealed against?

Yes, the garnishee order absolute being proceedings in which all parties have been heard and the interest of the judgment debtor in the money in custody of the Garnishee determined is one in which an appeal can lie to the Court of Appeal.⁸

Can garnishee *order nisi* be appealed against

No, there can be appeal against the order nisi made *ex parte*.⁹

⁶ *Fidelity Bank Plc. v. Okwuowulu* (2013) 6 NWLR (Pt. 1349) at 213 at 214

⁷ *Sheriffs and Civil Process Act*, Cap. 407, LFN, 1990, 87, see also *Nigeria Hotels Ltd. v. Nzekwe* (1990) 5 NWLR (Pt. 149) 187 at 197

⁸ *N.A.O.C. Ltd. v. Ogini* (2011) 2 NWLR (Pt. 1230) 131 at 153.

Does a garnishee have the right to set off debt due to him from a judgment debtor?

Yes, a garnishee bank is entitled to set off any debt due to him from the judgment debtor at the date when the order nisi was served upon him and the garnishee bank is equally entitled to a counter claim against the judgment debtor, at any rate where it arises out of the same transaction as the debt sought to be attached.¹⁰

Does a garnishee have the right to set off debts accruing after service of the garnishee order nisi?

No, the garnishee cannot set off debts accruing after service of the garnishee order nisi, nor can he set off a debt due to him from the judgment creditor.¹¹

What is the nature of an order nisi in garnishee proceedings?

An order nisi only creates an equitable charge over the funds in favour of the judgment creditor.¹²

How can a bank assess the financial worth of a customer?

One of the prudent ways open to a banker to assess the financial worth of a customer with it is to consolidate the accounts owned by agreement in his own right, unless precluded by agreement, express or implied from the course of business from doing so.¹³

Are there exceptional cases where a bank may be unable to consolidate the accounts of customers?

The exception to the right of set off may be where a banker opens two accounts for a customer, one in the customer's business name or incorporated body/company and the other in the customer's personal name. Both accounts cannot be merged by the bank as of right.¹⁴

When is the onus on a garnishee discharged?

The onus placed on a garnishee bank would only be discharged if it successfully establishes that the account referred to in the decree nisi does not exist in its

⁹ Court of Appeal Act, Cap. C36, Laws of the Federation, 2004, s 14 (1), see also *N.A.O.C. Ltd. v. Ogini* (2011) 2 NWLR (Pt. 1230) 131 at 153.

¹⁰ *Fidelity Bank Plc. v. Okwuowulu* (2013) 6 NWLR (Pt. 1349) 197 at 217, see also *Tappv. Jones* (1975) 10 L.R.Q.B. 591 at 593, see also *Hale v. Victoria Plumbing Co. Ltd.* (1966) 2 Q.B. 749.

¹¹ See. *O.A.U., Ile-Ife v. Olanihun* (1996) 8 NWLR (Pt. 464) 123 at 129, see also *Sampson v. Seaton Rly Company* (1874) 10 L.R.Q.B. 28.

¹² Rules of the Supreme Court, 1983, Order 45 rule 2

¹³ *Joe Golday Co. Ltd. v. Co-operative Development Bank Plc* (2003) 2 SCNJ 1; (2003) 5 NWLR (Pt. 814) 58

¹⁴ *British and French Bank Ltd. v. Opaleye* (1962) All NLR 26; (1962) 1 SCLR 60

system or, if it exists, it is heavily in debit and not in credit or that the number stated on the order nisi had since changed to another version.¹⁵

Garnishee Proceedings: Legal Implication for Banking Business

Garnishee proceeding is an aspect of our legal jurisprudence for the execution of money judgment, that is *sui generis*, in a class of its own. Here the judgment creditors in order to enjoy the fruit of his judgment applies to the court for an order *nisi* which the court will make having been satisfied in the affidavit in support of the application.

This topic seeks to bring to the fore, the meaning of garnishee proceedings in Nigeria, the principles governing garnishee proceedings and the legal implication on banking business as well as other third parties.

Definition

The term “garnishee” denotes a person or an institution (e.g. a bank) that is either indebted to or is baited for another, whose property has been subjected to garnishment.

Garnishee proceedings therefore is a process of enforcing a money judgment by the seizure or attachment of the debts due to or accruing to the judgment debtors, which forms part of his property in the hands of the third party for attachment. By this process, the court is competent to order the third party in whose hands the property of the creditor is to pay direct to the judgment creditor the debt due or accruing due him to the judgment debtor or as much it as may be sufficient to satisfy the judgment and the cost of the garnishee proceedings.

Garnishee proceedings deals with the attachment of debt owed to a judgment debtor by a third party, who is indebted to the judgment debtor or is custody of monies belonging to the judgment debtor and not proceedings against the judgment debtor directly.

The amount at the judgment debtor’s credit in the bank account constitutes a debt; the bank being the person indebted. Thus, the amount could be attached by garnishee proceedings. A credit balance invariably constitutes a debt payable by the bank to the customer on the demand of the customer.

Law Governing Garnishee Proceedings in Nigeria

There are hereunder listed the laws which govern garnishee proceedings in Nigeria, there are:

The 1999 constitution of the Federal Republic of Nigeria (as amended);

The Sheriff and Civil Process Act CAP. S6 LFN 2004;

¹⁵ *Citizens Int’l Bank Ltd. v. SCOA (Nig.) Ltd.* (2006) 18 NWLR (Pt. 1011) 332 and 336

The Evidence Act 2011

Rules of State and Federal High Courts'

Practice Directions of the State and Federal High Courts'

Case law

Constitution of the Federal Republic of Nigeria 1999 (As Amended)

Section 276 empowers the Chief Judge of a state to make Rules for regulating the practice and procedure of the High Court of the State.

Sheriff and Civil Process Act

The entire gamut of sections 83-92 of the Act deals strictly with garnishee proceedings specifically with section 83(1) of the Act expressly providing for the condition a judgment creditor must fulfil to ground an order *nisi vide his ex parte* application and the supporting affidavit.

Evidence Act 2011 - Section 167(d)

Failure to disclose account details of a judgment by a garnishee readily raises a presumption that the garnishee has something to hide and that may be presumed against the garnishee, under section 167(d) of the Evidence Act, 2011.

Practice Direction

Some states Chief Judges like River State have taken advantages of section 276 of the Constitution to make practice Directions for the conduct of case within the High Courts in their state as well as the Federal High Court. See Direction 8 (h) (i-iv) of the High Court of Rivers State Practice Directions No. 2 of 2013.

The Principles Governing Garnishee Proceedings

There are basically two principles governing garnishee proceedings which are most often enunciated as orders of the court. Here the orders of the court in garnishee proceedings can either be an *nisi* order or an order *absolute*.

Orders *Nisi* and Order *Absolute*

In the words of Akintan, JSC garnishee order *nisi* is put simpliciter thus: "The First is a garnishee order *nisi*. *Nisi* is a Norman-French Word and it means 'unless'. It is therefore an order made, at that stage, that the sum covered by the application be put into court or to the judgment creditor within a stated time unless there is some sufficient reason why the payment ordered should not be made. If no sufficient reason appears, the garnishee order is then made absolute

and that ends the matter in that the party against whom the order to the absolute is made is liable to pay the amount specified in the order to the judgment creditor. The court therefore becomes *function officio* as far as that matter is concerned in that the judgment who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him.

It is a condition precedent for a court to first make a decree or order *nisi* before an order *absolute*, as the latter is predicated on the former otherwise, an order absolute will not be valid.”

Garnishee Order

A garnishee order is an order of the Court obtained by a judgement creditor, directed to attach money of his judgement debtor which is in the hand of a third party, with the effect that the third party is prevented from paying the money so attached to anybody but to hold it as a custodian of the Court until the Court gives directives as to how the money is to be applied. The third party is called ‘the garnishee’, i.e. ‘the one command’ and the money attached will invariably be applied to satisfy the judgement debt.

In application to banking, the bank becomes the third party, ‘the garnishee’ or the ‘one command’ if the Court is convinced by the judgement creditor’s sworn declaration that the bank is having some money credit to the account of the judgement debtor who is the bank’s customer. As an example, assuming Mr. Y is indebted to Mr. X, (the debt having been proved in Court and therefore a judgement debt), but the debt is not paid and Mr. X got to know that Mr. Y has some money in AB Bank, Mr. X can apply to the Court for a garnishee order to be served on the bank to prevent it from paying any amount on Y’s account so that the amount can in the process be used to pay X. The three parties to a garnishee order therefore are:

- i) The judgement debtor, who is the bank’s customer and who in the above illustration, is Mr. Y.
- ii) The judgement creditor, who, following the judgement debtor’s failure to satisfy the debt, applies to the Court for the garnishee order to be issued and served on a third party whom he believes to be indebted to his judgement debtor and in the above illustration the judgement creditor is Mr. X.
- iii) The third party who is also called ‘the garnishee’ or ‘the one command’ and who is the party on whom the order is served. In the above example, the bank is the third party.

The garnishee proceeding is usually handled in a most confidential manner because if the judgement debtor whose money is to be attached has advance

notice of the impending attachment, he will withdraw his money from the bank and the purpose of the garnishee order will be defeated.

When an application for issuance of a garnishee order is filed, the Court, if satisfied, will as a primary step, issue a garnishee order *nisi*, i.e. a temporary injunction, under which the bank or the person on whom the order is issued is directed not to part with the money attached without directives from the Court. To be able to obtain a service of a garnishee order, the judgement creditor must swear to an affidavit mentioning the judgement debtor, the amount outstanding and stating that as far as he is aware, the person to be served is indebted to the judgement debtor. He needs not indicate how much the person to be served is owing his debtor but the name and address of the person to be served must be given and if it is a bank with more than one branch, the branch where the account is kept must be mentioned. The Court will then issue the garnishee *nisi ex parte*, i.e. without hearing the pleas of or even requiring attendance in Court of, either the debtor or the creditor, as much as the Court is satisfied that the applicant stands to be prejudice if the order is not issued. However, by Section 84(1) of the Sheriff and Civil Process Act, where money liable to be attached by the garnishee order is in the custody or control of a public officer in his official capacity, the order *nisi* shall not be made until consent to such attachment is first obtained from the appropriate officer but as bank officials cannot be classified as public officer, even if the bank is wholly owned by the government, such prior consent is not required from the bank before the order *nisi* is made.

The order may be limited or unlimited. It is said to be limited when it specifies the amount to be attached with the costs such that the bank can know through the order, the amount to be provided for should the customer's balance exceed the sum of the amount claimed and costs. The order is unlimited if no amount is specified in which case the bank must block the entire balance until the Court gives further directives. The bank will, in case of unlimited order, be acting to its own peril if it accepts any pressure from the customer for withdrawal of some money even if the customer is able to provide a proof as to the amount of his indebtedness which led to the service of the order. If the customer knows that his credit balance exceeds the debt in question, he should press the Court to convert the unlimited order to a limited order. In *Rovers v. Whiteley*¹⁶ decided at the British House of Lords, Lord Watson said:

“The effect of an order attaching ‘all debts’ owing or accruing due by him to the judgement debtor is to the garnishee the custodian for the Court of the whole funds attached and he (the garnishee) cannot, except at his own peril, part with

¹⁶(1892) A. C. 118: 61 L.T. Q.B. 512

any of those funds without the sanction of the Court... it is within the point of the Court to restrict its operation to such amount of the debt owed by the garnishee as will satisfy the judgement debt, but so long as such a restriction is not made, and the attachment is unreleased, the garnishee is under no obligation to disregard the attachment and to pay the excess to his creditor."

However, if the order is restricted to a specific amount, i.e. limited and the customer's credit balance exceeds that amount, the bank can place the amount of the order in a suspense account pending further directive by the Court and allow the customer to withdraw the excess or in fact allow the amount to continue running as before.

After the issuance *ex parte* of the order *nisi* or temporary order, the Court will hear the pleas of both sides. The judgement debtor will give reasons, if any, while the order should be lifted. He may, for example, to be able to prove that he has paid the debt through an agent of the judgement creditor or that he has a right of set-off or that the judgement creditor had in fact agreed to a scheme of instalmental payment. The judgement creditor will also give reasons why the order should be confirmed. The order will be lifted if the Court is not satisfied that the order should be confirmed (made absolute) and in that wise, the bank will be advised to allow the account to continue running as before. Notice that the bank is not involved in the proceedings but may apply to the Court if he has a claim to make or stands to be prejudiced by any absolute order.

One of the reasons why an order *nisi* will not be confirmed was demonstrated in *Barclays Bank D.C.O. Limited v. J.A. Baderinwa (debtor)*¹⁷ – Baderinwa was indebted to Barclays Bank and the debt was not satisfied. The Lagos Executive Development Board later acquired a piece of land which gave rise to a debt for compensation in favour of Baderinwa and the bank brought this action to attach the debt to that instead of paying Baderinwa the Board should use the money to satisfy Baderinwa's debt with the bank. A garnishee order *nisi* was issued to restrain the Board from paying Baderinwa and pleadings were ordered during which Baderinwa contended that the land, though brought in his name, did not belong to him as he used family money belonging to him and orders to buy it and as such it would not be equitable for the compensation to be attached. The Court ruled that the order would not be made absolute nor would it be lifted but that enquiry would be ordered as to the ownership if the bank did not want to pursue the matter further. The implication here is that if the bank did not want to pursue the matter further or, if when pursued further, it was ascertained that the land did not belong to Baderinwa, the order would be lifted. However, if the

¹⁷re: Lagos Executive Development Board (Garnishee) (1962) 2 All NLR Vol.2, 1102

Court is satisfied that the application has merits, in that the land belongs to Baderinwa in his personal capacity, the order will be confirmed and made absolute and the board will be informed through the issuance of an absolute order. The absolute order being the final order, will be in 'limited' form, specifying the amount to be attached and the cost. If the amount in the customer's account, which is attached according to the rules below, is more than the amount specified in the Court Order, the bank will satisfy the Court and leave the balance for the customer who can now continue with the account. If the amount is less, the entire amount should be remitted to the Court. It is not the duty of the bank to make-up the short-fall.

Rules as to Attachment

The following points are worthy of note as regards account that will be attached by a garnishee order:

- i) All credit balances due to the customer are attached. However, where the account is in debt in which case the customer is in fact owing the bank, nothing is attached and the Court must be advised accordingly. But where the customer has an overdraft limit which is yet to be fully withdrawn, the difference which is still available for the customer to withdraw will be attached. In arriving at the balance to be attached, the bank is entitled to exercise its right of set-off, if any. Loan already due for payment and already demanded for may be deducted but loan not yet due for re-payment cannot be deducted. The balance on current account will be attached even though demand by the customer is a condition precedent to crystallising the debt. In *Joachimson v Swiss Bank Corporation*,¹⁸ it was held that a garnishee order operates as a demand to render the balance "owing and accruing due".
- ii) Money held on behalf of another party or in trust is attached as much as the money is held to the customer's credit and the customer can withdraw it. Thus in *Plunkett v. Barclays Bank Limited*¹⁹ money in the credit of a solicitor's trust account was said to be attached. However, where a trust account is attached, the fund may be protected if the beneficiary can prove his interest.²⁰
- iii) The order must correctly identify the judgement creditor otherwise the bank will be entitled to ignore it. The reason is that if the bank wrongfully dishonours cheques on an account that was not intended to be attached, the consequence can be disastrous. The bank may as well ignore corrections made

¹⁸ (1921) 3 KB 110

¹⁹ (1936) All E.R. 653.

²⁰ *Harrods Limited v. Tester* – 1937 2 All E.R. 236.

by a party other than the Court. In *Koch v. Mineral Oil Syndicate*²¹ a garnishee order was served on a bank and the bank informed the solicitors to the judgement creditor that it had no account in that name. The solicitor quickly advised the bank of the correct name that was intended to be served and also went to have the order amended by the Court to reflect the correct name. However, before the Court amended order was served on the bank, the customer had drawn cheques on the account. The bank was held not liable for the cheques paid and that bank was entitled to ignore the previous order and to act on the new order effective from the time the new Court order was served.

- iv) Only money owed to the customer at the time of service of the order is attached. In *Happenstall v. Jackson, Barclays Bank Limited*,²² it was held that money paid into the judgement debtor's account after the service of the order is not attached. It is therefore prudent to rule off the account to cut off the amount attached and place subsequent credit into a new account.
- v) Only money which could be conclusively said as already paid from the account will not be attached provided the payment of such money or its effective transfer has been completed at the time of serving the order. In *Rekstin v. Severo Sibirsko*²³ it was decided that a garnishee order revokes a customer's transfer instruction despite completion of book entries as much as the transferee has not been informed.
- vi) A garnishee order issued to one party in a joint account does not attach the joint account. In *Hirschorn v. Evans*²⁴ where an order was for the husband only, and the account is "Mr. & Mrs.", despite the "either to sign" mandate the account was said not to be attached. Garnishee order naming two judgement debtors will, however, attach the joint account and individual accounts of the joint parties.²⁵ In the same manner, garnishee order on one or some of the partners will not attach the partnership account²⁶ but if the order attaches a partnership account, it also attaches personal accounts of the partners – even though not separately named in the summons. Garnishee order on partnership will attach the account of any one partner for the whole sum of order because of the principle of joint and several liability.
- vii) A garnishee order protects ascertained debts only and cannot be made to protect contingent liability like bills discounted. In a like manner, the bank

²¹(1910) 54 S.J. 600 CA

²²(1939) NCLR, 182

²³(1933), 1 K.B. 42;

²⁴(1938) 2. K.B. 801; 3 All EP 491

²⁵(1859)

²⁶(*Bank of the North v. Dabare*) (1974) NCLR 448

cannot set up part of the credit balance as a reserve against bill discounted or other contingent liability of the customer as much as such liability has not yet crystallized.²⁷

- viii) Deposit account, whether fixed or short term, notwithstanding any maturity condition or any notice requirement will be attached. It is immaterial that the customer has not submitted the deposit receipt issued to him because the order, once made absolute, acts as a cancellation of such a receipt.
- ix) Cheques paid in but not yet cleared are not attached except there operates a standing arrangement under which the customer is allowed to draw against his uncleared effects.²⁸
- x) Proceeds from disposal assets on the customer's behalf may or may not be attached. They are not attached as much as the bank has not actually collected the proceeds even though the assets, e.g. shares, have been sold before the garnishee order and the bank has been liable to the customer for payment since the time of sale.
- xi) Money held in overseas branches of the bank are not attached because they are outside the jurisdiction of the Court issuing the order. However, money held locally but in foreign currency is attachable.
- xii) Money held in account opened under a trading name (not incorporated companies) is attachable as much as the name attached is the sole owner of the business.
- xiii) Cash paid in at other branches of the bank, even though not yet received in the branch where the account is kept, is attachable if discovered, as much as such cash has been paid in before the service of the garnishee order.
- xiv) If a cheque is specially presented and a bank issued its own instrument – e.g. bankers payment, to pay it before the receipt of the garnishee order, the amount of the cheque is deductible in computing the balance to be attached even though not yet debited to the account. However, cheques presented through normal clearing should be returned unpaid as much as the fact has not been advised to the collecting bank and the days allowable for returning such cheques have not expired.
- xv) If a bank on enquiry, e.g. through a telephone, confirms that a particular cheque would be paid if presented but before actual physical presentation of the cheque a garnishee order is served, the paying bank cannot debit the cheque to the account because according to the Bill of Exchange Act, the paying bank cannot debit its customer's account until it takes physical

²⁷*Bowerv. Foreign & Colonial Gas Co. and Ors* (1874)

²⁸*(A.L. Underwood v. Barclays Bank Limited* (1924)

possession of the cheque nor can it appropriate fund to meet payment of a cheque. A bill of exchange cannot be paid in proxy.

- xvi) Money held in a suspense account of a bank is attached, if it belongs to the judgement debtor.²⁹ The substance of the case was that on 1st December, 1969 judgement was entered in favour of the judgement creditor (Ayuba) against Egbado Trading Company for £1,250 but the judgement was not satisfied. The judgement creditor applied for a garnishee order and on 5th January, 1970 a *nisi* order was issued at the Lagos High Court for service on the Bank of America. On that date, a bank official submitted that a sum of £1,049-5s-0d was deposited by the judgement debtor (Egbado Training Company) and was placed on a suspense account pending remittance to an Italian overseas firm but exchange control permit had not been granted by the Central Bank. Justice R.A. Bakare held that the money belongs to the judgement debtor on the day of service of the order because until foreign exchanged approval had been obtained, it would be illegal to transfer it to the Italian Overseas Company. The judge then concluded that the sum was attached in part satisfaction of the judgement debt and costs.

The Bank Garnishee Order

Garnishee order may be served on the branch where the account is kept or on the bank's head office, whichever is convenient. If the order is served on the branch, the effect is immediate. However, if served on the head office, reasonable time will be allowed for the head office to transmit the order to the branch concerned but the head office must act with dispatch.

Once the order is received in the branch, immediate action must be given to it as the time the order is received determines which amount to attach and which not to attach. If the order is received at 10:00am it does not affect transactions that occur at 10:01am. The time the order is received must therefore be indicated and it may be prudent to record time on other transactions of the customer affected thereafter that day to avoid dispute as to whether or not an item ought to be taken account of.

If the account is in debit, the situation is simple as nothing is attached but the bank must advise the court immediately. The bank should, in any case, call the customer, inform him of the order and try to establish the cause because it may be a symptom that he is in financial problem which may precipitate other problems and this should guide the bank in the conduct of the amount especially with regards to granting of overdraft and other credit facilities.

²⁹*Ayuba v. Ogunleye* (1970) N.C.L.R. 21

The bank must not act against Court order and must not allow the customer to put pressure on it to release funds against Court order. Where limited order *nisi* is issued, the bank can transfer the amount of the judgement debt plus cost of a suspense account pending an absolute order from the Court. In the alternative, it may leave the amount there, open a new account for the customer and lend him money up to the amount of the excess pending discharge by the Court. In both cases, the account should be ruled off and all rights of set-off exercised by the bank. Cheques presented and clearing cheques already on hand but whose time has not expired should be returned marked 'Refer to Drawer' even if already debited to the customer's account.

Practical Examples on Application of Garnishee Order Principles

Mallam Yaro is a solicitor and been banking with you for over fifteen years without any disturbance on the account. He is very friendly with the bank and has introduced many profitable accounts.

At 11:00 this morning (1st July, 2017) you received an unlimited garnishee order *nisi* from the Lagos High Court naming Mallam Yaro as the judgement debtor. The judgement creditor was named as Mallam Sambo, a trader in another town of about one hundred kilometres away. The balances on the various accounts of Mallam Yaro as at the receipt of the garnishee order were as follows:

Mallam Yaro	Personal Current Account	₦2,000.00Cr
Mallam Yaro	Practising Current Account	₦12,500.00Cr
Mallam Yaro	Client Current Account	₦5,800.00Cr
Mallam & Mrs. Yaro	Joint Deposit Account	₦20,000.00Cr
Mallam Yaro	Loan Account (next repayment)	
	due in a month's time	₦10,000.00Cr
Mallam Yaro, Mallam Sambo	'Executor of Mallam Hammed'	₦5,000.00Cr
Mallam Yaro	Foreign Domiciliary Account	£5,000.00

Further investigations on matters in which the name of Mallam Yaro appeared revealed the following:

- Mallam Yaro had paid a cheque for ₦100 proceed of which was yet to be credited to the account because the clearing period had not expired;
- Mallam Yaro paid in a cash of ₦200 into his account with you on 29th June, 2017 but the cash was yet to be credited into his account as it was paid in at another branch of your bank;
- Two cheques, one for ₦350 and the other for ₦200 issued by Mallam Yaro came in through clearing yesterday and had been debited to the account. You have two days to determine their fate and the one for ₦350 is in favour of the judgement creditor;

- d) At about 9 o' clock this morning, a cheque of ₦1,500 had been presented special clearing for which your bank issued bankers payment. This cheque has not been debited into the account;
- e) Mallam Yaro gave you an irrevocable instruction to transfer ₦100 to the account of a friend monthly. This months' remittance fell due on 1st July, 2017 and all the entries have been prepared before the garnishee order but have not been posted. The friend is aware that the money will come every month;
- f) Mallam Yaro paid ₦25 recently to buy foreign bank draft for the membership fee of a foreign professional body but as you are yet to receive Central Bank's approval, this money is still in your Suspense Account;
- g) Mallam Yaro maintained a current account at X Bank, London, balance on which is J500 credit. The current exchange rate is ₦8=£1;
- h) Z bank, another local bank, phoned you this morning and asked if a cheque for ₦100 drawn by Mallam Yaro on your bank account would be paid if presented as they were about to give value for it and you answered 'Yes, if in order'. The cheque was presented after the receipt of the garnishee order.
- i) It was detected later that Mallam Yaro had a deposit account in his sole name for ₦1,000 withdrawable with seven days' notice.
 - 1) What step will you take in respect of each account and how will the additional information affect your action?
 - 2) Assuming the garnishee order is limited to ₦500 inclusive of cost, will your actions have been different?
 - 3) Mallam Yaro came to the bank and told you that the order arose from a debt totalling ₦200 which he refused to pay out of annoyance. He showed you his own copy of the Court summons showing the debt as ₦200 and asked you to allow him withdraw some amount, still leaving substantial balance on the account. He told you that he had in fact issued a cheque to pay off the judgement creditor as in (i) above.
 - 4) Assuming the garnishee order in error contains Mallam Bako as the judgement debtor but Solicitor to the judgement creditor comes to tell you the correct name is Yaro. Before he brings an amended Court order, Mallam Yaro comes to withdraw, will you pay him?

Suggested Solution

1. (a) The personal current account of Mallam Yaro will be attached, the account being in credit.
 - (b) The balance on the practicing current account will also be attached as much as it belongs to Mallam Yaro and even if being operated in a trading

name like: “Yaro & Company - Solicitors” or “Yaro Chambers” as much as he is the sole owner.

- (c) The client’s Account will be attached but representation can be made to have it released since the balance there does not belong to the Solicitor.
 - (d) The £5,000 held in Foreign Domiciliary Account kept in the local bank will be attached, even though kept in foreign currency and it will have to be converted into naira. However, the £500 kept in a London Bank Account as in (g) above will not be attached, that been outside the jurisdiction of the Court issuing the order.
 - (e) The bank has no right to set-off in respect of loan repayment that is not yet due for payment or in respect of any contingent liability and therefore the loan balance cannot be deducted from the amount attached.
 - (f) Both the joint depositor account and the Executor’s Account will not be attached because they are not in the customer’s sole name.
2. With the additional information, the position will alter as follows:
- a) The ₦100 in uncleared effect will not be attached unless there is standing arrangement that the customer can draw against uncleared effect.
 - b) The ₦200 paid at another branch before the service of the garnishee order will be attached, whenever received at the branch where the account is kept.
 - c) The two cheques should be returned unpaid, marked ‘Refer to Drawer’ and debit entries on the account reversed. The reason is that the cheques had not been conclusively and irrevocably paid since time for their return had not expired. It is immaterial that one of the cheques was issued to the judgement creditor.
 - d) The cheque for which the bank had exchanged its payment instrument before the service of the garnishee order could be debited to the account, since the cheque had been conclusively paid. The same will apply to a cheque paid under cheque guarantee card.
 - e) The garnishee order revoked the instruction for the month and the account cannot be debited. It is immaterial that the beneficiary will be expecting it as much as he has not been specifically informed that the July remittance is on its way to him. Only actual notice to him and not mere expectation by him will enable the bank effect the remittance.
 - f) The money held in suspense account pending the procurement of the Central Bank’s approval still belongs to the customer and it is therefore attached by the garnishee order.
 - g) As stated above, balance on account held abroad will not be attached.

- h) Even though the bank answered, 'Yes, if in order' and is already liable to Z Bank on the cheque, it cannot debit the account. A cheque is not an assignment of fund and until actually presented, and in the hand of the assigned to it and it cannot be said to have been paid. The bank had answered to its own peril and the correct answer would have been 'Yes, if in order and if in our hands now'.
 - i) The deposit account in his sole name for ₦1,000 is immediately attached despite the notice condition. If fixed deposit account for which a receipt was issued, garnishee order will revoke such a receipt and it is not necessary for the customer to discharge the receipt before the amount is attached by the garnishee order.
3. If the garnishee order is limited as to the amount of debt and the cost, the total amount so attached will be transferred to a suspense account and the account will continue to run as before.
 4. The bank will advise Mallam Yaro to make any explanation he has on the matter to the Court to enable the Court revoke the order as the bank is not prepared to accept any evidence or proof from Mallam Yaro. The bank has the obligation to hold the entire account as custodian for the Court until the Court gives further directives. Mallam Yaro should not be allowed to withdraw and the cheques issued to the judgement creditor should be returned unpaid.
 5. The amended order will act as a new order and until received, Mallam Yaro can withdraw on his account. It is immaterial that the judgement creditor's solicitor came to make the correction – the bank is responsible to the Court only and to no one else. If the solicitor's correction was later found to be wrong and the bank had returned cheques issued by Mallam Yaro, the customer can sue the bank (*see Koch v. Mineral Oil Syndicate*).

Legal Implication of Garnishee Proceedings on Banking Business and Other Third Parties

Gleaned from the foregoing, the implication of garnishee proceedings is twofold Viz. the making of decree or order *nisi* and *absolute* respectively by the court in garnishee proceedings.

In *C.B.N. v. Auto Import Export and Anor.*³⁰ the appellate court per Saulawa, JCA states that:

"However, it must emphatically be made clear, that the mere services of the garnishee order *nisi* on the garnishee does not necessarily operate as a transfer of the ownership of the debt to the judgment creditor. Conversely, it merely creates

³⁰ *Supra*

an equitable charge on the debt in his favour and the garnishee cannot pay out to anyone but the judgment creditor without the risk of having to pay it over again. By the order, the judgment creditor is placed in the position of the assignee of the judgment debtor...”

This position of the appellate court is consistent within the statutory provision of section 85 of the Sheriff and Civil Process Act, to the effect that once an order decree *nisi* is served on the garnishee, it operates as a stay on the money of the judgment debtor in the custody of the garnishee so that the garnishee cannot pay same to the judgment debtor or any other until the proceeding is concluded by discharging or absolute order of the court.

Whereas, an order absolute concludes the proceedings and places the garnishee in the position to pay the debt in its (his) custody into the court or to the garnishee judgment creditor to the exact amount standing to the credit of the judgment debtors whether or not same is sufficient enough to satisfy the judgment debt.³¹

Conditions for a Valid Garnishee Proceeding

The garnishee must be indebted to the judgment creditor within the state and be resident in the state in which the proceedings are to be brought. See section 83(1) Sheriff and Civil process Act.

The proceedings should be filed in any court in which the judgment debtor could, under the High Court (Civil Procedure) Rules or under the appropriate section or rules governing civil procedure in Magistrate Courts, as the case may be, sue the garnishee in respect of the debt. Thus, the court may not necessarily have to be one that gave the judgment. It could be a magistrate court jurisdiction. See order 8 rules 2 (a) (b) of the Sheriff and Civil Process Act.

The application for the garnishee order shall be made *ex parte*. The court, if satisfied that the judgment creditor is entitled to attach the debt shall make a garnishee order *nisi*. See order 8 Rules 3 (2) of the Sheriff and Civil Process Act, and

The service of the order *nisi* binds attached the debt in the hands of the garnishee. Section 85 Sheriff and Civil Process Act.

Parties to a Garnishee Proceeding

The court of Appeal in the case of *Wema Bank Plc. v. Auto import and Anor*³² stated that “a garnishee proceeding for an order *nisi* is strictly *ex parte* between the garnishee (judgment creditor) and the garnishee bank or institution. The

³¹ *Union Bank Plc v. Boney Marcus* (2012) 1 BFLR 655 SC.

³² (2012) a BFLR Pg. 489

court went further to state that “a judgment debtor is not a part to an *ex parte* application for a garnishee order *nisi* made by the garnishor against the garnishee. A judgment debtor has no business in a garnishee proceeding which is purely between the garnishee and the judgment creditor, particularly where it was an order *nisi* alone that had been made. The judgment debtor is not an aggrieved person under the constitution and can neither appeal nor refile any process in the court.”

However, again the Court of Appeal in the case of *CBN v. Imports Export and Anor.*³³ held that “in garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the garnishor. The garnishor and the garnishee as well as the judgment debtor constitute the parties to the proceedings.”

The two above cited Court of Appeal decisions tend to conflict on the proper parties in garnishee proceedings as one excludes the judgment debtor as a party (Wema Bank case) whereas, the other (C.B.N Case) includes the judgment debtor as a party. The contemplation therefore remains who the proper parties in garnishes proceedings are yet to be a Supreme Court pronouncement on the subject as to who the proper parties in garnishee proceeding are.

Albeit, with the absence of a decision from the apex court in resolution of the conflict occasioned by the court of appeal both afore-cited authorities on the proper parties to garnishee proceedings. In resolving however, it is my strong yet subtle opinion recommendation that recourse should be made to section 83 of the Sheriff and Civil Process Act which expressly provided for the order *nisi* being made against the garnishee and not the judgment debtor. Therefore, it is appropriate to align with the decision of the court that excludes the judgment debtor (Wema Bank case) as the correct position of the law on who the proper parties are in garnishee proceedings, especially when the judgment debtor is not expressly included in the *ex parte* application for an order *nisi*.

Conclusion

This topic and the entire discuss has been able to capture the main focus and essence of garnishee proceedings in Nigeria, paying particular attention to salient and intricate issues as proper parties, laws governing garnishee proceedings in Nigeria, its nature, principles and legal implication on banking business and other third parties in general. It has also attempted to resolve the grey issue of proper parties in this subject.

³³ *Supra*

Chapter 12

Nature and Legal Effects of Negotiable Instruments

Introduction

Negotiable instruments are commercial documents or papers which played and continued to play a key role in international commercial and finance. The origin of these documents or papers and their history in Nigeria are inextricably woven with their evolution in the United Kingdom. Holden¹ wrote that it was in the custom, usage and practice of early Arabs who ruled western commerce after the fall of Roman Empire that we find the germ of modern negotiable instruments. He noted that in the eight century A.D., long before anything like the Bill of Exchange appeared in Italy, something very much like it was known. The custom, usage and practice of the early Arabs were subsequently replaced by those of the Lombards, the Italian merchants from the four republics of Genoa, Lucca, Florence and Venice. From this vintage point, the custom, usage and spread in the United Kingdom and indeed all other parts of Western Europe. In the United Kingdom, some of these in later years came to be recognized as *Law Merchants*. In more recent times financiers adopted them for the purpose of creating, transferring and effecting satisfaction of financial obligations. As *Law Merchants*, they were subsequently incorporated into the English common law. In consequence, they were further developed by the earl common law judges. During the process of these developments, these instruments acquired statutory recognition first in the United Kingdom and subsequently in Nigeria.²

In its more modern form, negotiable instruments acquired and constituted a narrow class of choses in Action, that is, basically legal as distinct from physical things. But unlike other choses in Action they are negotiable, that is transferable by mere delivery without notice and free from equities. All these have helped to place them into a special category of commercial documents or papers having special characteristics. These characteristics were highlighted by Kazeem, *Ag. J. in*

¹ J. M. Holden, “*The history of Negotiable Instruments in English Law*, (London: Althone, (1955) at pp. 20-21

² See English Promissory Notes Act, 1704, Bills of Exchange Act 1882, Bill of Exchange Act 1990

Cromton-Richmond Co. Inc. v. Atanda, where he said that:³ Thus every negotiable instrument has three distinct characteristic features, namely, it is an instrument; it is a contract; and it is negotiable. It becomes pertinent to examine these qualities for the proper appreciation of their import and significance.

Negotiable Instrument as an Instrument

An instrument is a writing and generally imports a document of a formal kind. It has been defined as “any written document under which any right or liability whether legal or equitable exists”⁴. However, a negotiable instrument is not merely evidence of the existence of a right or liability but the creator of the right or liability in question.

Negotiable Instrument as a Contract

Every negotiable instrument is a document embodying a contract or promise in writing to secure the payment of money or the delivery of security for money. It is pertinent to understand that the instrument itself is the contract and not merely evidencing the contract or promise to pay or deliver such security for the money. On the other hand, a document which does not entitle the holder to payment of money may relate to peculiar or exceptional circumstance. These however relate to peculiar or exceptional circumstances⁵ and therefore should not be considered as derogating from the general tenure.

Being a written contract, the general common law principle relating to such contracts are applicable to the *stricto sensu*. Thus, for example, where there is patent ambiguity⁶ on the face of an instrument, extrinsic evidence is not admissible to explain the ambiguity. These general rules are however subject to certain special rules, principles and practices which were developed by the early merchants relating to them.

Negotiable Instruments are Negotiable

The most pertinent characteristic of a negotiable instrument is the quality of the instrument as well as the contract embodied in it being negotiable rather than assignable. Normally, a transfer of a contractual right from one person to another is effected by an assignment of either the right per se or the contract embodying the right. But if the right is created by or embodied in a negotiable instrument, it can be transferred by negotiation. Basically, assignability is a quality which enables the owner or transferee to pass on his right to a third party, but latter takes it subject to equities. That is any defects it might have had at the time of the

³ (1967) N.M.L.R. 383, at p.386

⁴ Per Sterling, J. in *Mason v. Schuppisser*, [1899] 81 LT. 147, at p.148

⁵ See *Saunderson & Ors. v. Piper & Ors.* [1839] 132 E.R. 1163, at p.1165, per Tindal, C.J.

⁶ *Godwin v. Roberts* [1976] 1 App Cas. 476

assignment. Negotiability, on the other hand, is the quality which enables the owner or transferee, provided he is bona fide, to get or receive from the transferee a better title than the latter might have had at the time of the transfer.

The quality of negotiability has itself three distinct features. The first is that the right created by or embodied in the instrument is transferrable by mere delivery, there being no formality required for an effective transfer.

Thus for example, if an instrument creates a right for an unspecified or unnamed person (payee) mere delivery of the instrument to another person with the intention to transfer the right suffices to accomplish that intention. On the other hand, if the payee is specified or named in the instrument, he may effect a valid transfer of his right to another person only by an endorsement followed by delivery.

The second feature is that the transferee, on delivery acquires an unfettered right to claim in his own name to enforce the contract or promise created or embodied in the instrument. It is not necessary for the transferee to give notice of the transfer to the principal debtor as is required in the case of an assignment of any other chose in action for the transfer to be valid and effective.

The third feature is that a bona fide transferee for value and without notice acquires his title free from equities. This means that he acquires a valid title and is not prejudiced by any defect in the title of his transferor. In *Webb, Hale & Co. v. Alexandra Wate & Co. Ltd.*⁷ Kennedy, J. stated that if a document is to be treated in the fullest sense as negotiable, the holder is entitled to say:⁸

“I have my right on this document. Although someone in the chain of deliveries before the document reached my hands, there was some larceny or other fraud affecting the obtaining...(it)...I, being an honest bona fide holder, am entitled to treat this as in the fullest sense a negotiable instrument, and therefore one which gives me as perfect a right as if those through whom I derived title had also held a perfect and unassailable right in the transaction which enabled me to get ...(it)”

It is pertinent at this juncture to examine some of the instruments that are designated as negotiable instruments. But before doing so, it is pertinent, in order to avoid serious confusion, to examine, first, some others which are not strictly speaking negotiable instruments. It is pertinent to do so because some of these wear the semblance of negotiable instruments but they are not fully negotiable. It is for this reason that they are often referred to as *quasi-negotiable instruments*. Prominent among those currently used are bill of lading, share certificates, postal and money orders, and I.O.U. We may examine them albeit cursorily.

⁷ (1905) 93 L.T. 339

⁸ *Ibid*, p.344

Quasi-Negotiable Instruments

Bill of Lading

The bill of lading has been fully described above.⁹ It remains to state that although it has attributes similar to those of a negotiable instrument, it is strictly speaking not a negotiable instrument. It has the attributes of a negotiable instrument in that¹⁰

- a. It is freely transferable so that the ship-owner or his agent is obliged to deliver the goods described in it to whoever presents the original. But unlike negotiable instruments, that person took the bill subject to equity. This it has been state that “an endorsement of a bill lading does not by itself, *prime facie*, confer any legal right of possession, or anything more than the authority of the endorsee”
- b. It is not necessary to give notice of any transfer or assignment of a bill of lading to the ship-owner or his agent his in the case of a negotiable instrument.¹¹
- c. The transferee is a bill of lading may sue in his own name.
- d. The transferee, in some cases, may be virtue of a transfer acquire greater rights than those of the transferor. This it has been pointed out that¹² “an endorsement of a bill of lading...as of itself confers an interest in the foods, does on behalf of a bona fide indorsee operate as an Actual delivery of the possession would have done, and so renders the interest indefeasible by the original vendor’s *stoppage in transitu*. To that extent the bill of lading is negotiable.”

In *Okoronkwo v. Standard Bank of Nigeria*,¹³ the court held that the indorsement and delivery of a bill of lading passes property in the goods and rights under a contract of carriage. It was held further that this carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the ship-owner.

Share Certificate

A share certificate is a document certificate that the shareholder named therein is the registered holder of the number and type of shares specified. It is the only documentary evidence of the title to those shares in the possession of the shareholder. As Lord Cairns L.C. pointed out in *Shropshire Union Railways and*

⁹ *Halbury’s Laws of England*, 3rd edn., vol. 35 p.329

¹⁰ Per Borvil, C.J. in *Dracachi v. Anglo-Egyptian Navigation Co.* (1868) LR 111 C.P. 190 at pp. 191-192

¹¹ *Crompton-Richmond & Co. Inc., supra*

¹² *Supra*, note 10, at p.192

¹³ (1974) N.C.L.R. 313; see also *Adesanya v. Leigh Hoesh* (1968) N.C.L.R.430

Canal Co. v. The Queen,¹⁴ ...a certificate of the shares...of a company of merely a solemn affirmation under the seal of a company that a certain amount of shares...stand in the name of the individual mentioned in the certificate...¹⁵

A share certificate is not a negotiable instrument because it is not freely transferable; whether a transfer of the shares mentioned in a certificate should be permitted or nor is entirely within the discretion of the directors of the company concerned. A transferee of a share certificate acquired title not by obtaining delivery of the certificate but by transfer of the shares into his own name by the company. This can be achieved by following the procedure provided for such transfer under the provision of the CAMA.¹⁶

An ordinary "I owe you" normally written as I.O.U. is nothing more than a bare admission in writing of a debt. It is only evidence from which the law will imply a promise to pay the amount of money stipulated therein. The document shows that the parties stand in relation of debtor and creditor. Thus, there must be a subsisting debt and the document evidencing this must have signed by the principal debtor.

An ordinary I.O.U. is a negotiable instrument but if it contains an express promise on a day certain, it has the same effect as a promissory note. Thus in *Brook v. Elkins*,¹⁷ an instrument containing the words, "I.O.U. N20 to be paid on the 22nd instant" was held to constitute either a promissory note or an agreement to pay the sum of money mentioned.

Postal and Money Orders

There are documents issued by the post office on a form and under government regulation. By these regulations the payee of an order shall in ordinary cases sign a receipt in the form appearing on the order. Although they may be crossed with the words "not negotiable" and may be passed through a banker for payment, these do not give them the character of instrument transferable to the bearer. They have none of the attributes of a negotiable instrument and have not been treated as such by general practice.

Lord Esher in *The Fine Arts Society, Ltd. v. The Union Bank of London Ltd.*¹⁸ confirmed these positions when he observed that¹⁹ "it seems clear that they have not been treated as negotiable instruments by the general practice in England. I do not think that bankers or merchants or the post office have, for

¹⁴ (1875) L.R., 7 H.L., 496.

¹⁵ Ibid., at p.509

¹⁶ Sec. ss. 146, 147, 151-157 of the CAMID

¹⁷ (1836) 150 E.R., 64

¹⁸ (1886) 17 Q.B.D., 705

¹⁹ Ibid at p.710

purpose and with regard to all persons so treated them. They have none of the attributes of negotiable instruments.”

Negotiable Instruments

Bills of exchange, cheques and promissory notes are presently the most important of negotiable instruments currently in use. They are considered in some detail in the preceding chapters of this book. For the time being the lesser known and used types of negotiable instruments will be considered.

Treasury Bills

Treasury bills are promissory notes issued by the government to raise short term loans. They are usually issued for a fixed sum of the CBN Acting as agent for the Nigerian government. It is the practice for the Discount Houses to purchase them at discount thus receiving interest on the loan they give. They are subsequently re-sold by the discount houses in the money market at some profit.

Treasury bills serve as a means of channelling surplus funds for the money market into short term loans for the government.

Travellers Cheques

These are documents issued by a drawee bank to enable its customer or other recipient to draw cash from the bank's branches or other bank overseas. It is commonly in the form of a cheque containing an order addressed to the foreign bank requiring it to pay to the customers or other holder or to his order the sum specified therein.

The customer or such other holder by endorsing it formally negotiates it to the foreign bank of cash. The foreign bank then becomes the holder and entitled to payment by the drawee bank, that is, the bank which issued the travellers cheque initially. Most Nigerians travelling abroad on their basic travelling allowance (B.T.A) or on pilgrimage use this form.

Banker's Draft

When a bank or a branch thereof wishes to make a payment, it invariably does so by an instrument drawing on itself or another branch. The instrument employed for such purposes is generally referred to as “banker's draft”. This takes the form of an order addressed by the banker to itself through its head office or one of its branches to pay the sum of specified therein to the named payee. It is commonly in the form of a bill of exchange but since the drawer and the drawee are one and the same person the holder is allowed to discretion to treat it as either a bill of exchange or a promissory note.²⁰

²⁰ Bill of Exchange Act 1990 Cap 35 s. 5(2)

Banker's drafts are commonly employed in Nigeria for financing internal payment transactions when the payee wishes to ensure that the promise to pay shall be honoured. They afford the additional assurance where a debtor's personal cheque may be considered as insufficiently reliable for fear of dishonour. For this reason, such instruments are preferable by the government and the business community as means of internal settlement, than cheques. In practice, the bank concerned would usually ask and obtain a hundred per cent (100%) cash cover from their clients or customers before issuing a draft of an equivalent amount.

It is pertinent to point out here that the protection given to paying and collecting bankers under the Act applies also in respect of banker's drafts. This is so because such protection is given only in respect of prescribed instruments which under section 2(1) of the Act includes "a draft drawn by a banker upon himself and payable on demand at an office of his bank."

Share Warrant

Any public company has the statutory power to issue share warrants. Section 85(1) of the Companies Act 1968 provides that,

A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issues under its common seal a warrant [in this decree hereafter referred to as "Shares Warrant"] stating that the bearer of the warrant is entitled to the shares therein specified and may provide, by coupons or otherwise, for the payment of the future dividend on the share included in the warrant.

Shares warrants have been held to be negotiable.²¹ Section 85(2) of the Companies Act 1968 provides in this respect that "a share warrant shall entitle the bearer thereof to the shares therein specified; and the shares may be transferred by delivery of the warrant." Share warrants have now been abolished in Nigeria under the provision of section 149 of the CAMD.

Dividend Warrants

These are documents addressed by a company to its banker directing it to pay to the shareholder named or to his order the sum specified therein this sum represents his share of the dividend declared by the company in a particular year of business operation.

It has been held that a dividend warrant is negotiable unless it is endorsed with the word not negotiable or contains the name of the payee without the words or order.²²

²¹ *Webb, Hale & Co. v. Alexander Wate & Co. Ltd.*, (1905) 93 L.T. 339

²² *Patridge v. Bank of England* (1846) 9 Q.B.D. 396.

Bearer Debentures

These are documents issued by a company acknowledging its indebtedness to the holder or bearer. They are commonly used for long term loans to the company. At fixed rates of interest and secured on a floating charge on the assets for the time being owned by the company. The holder of a bearer debenture of a company is thus a secured creditor of the company.

Because they are issued to bearer, their negotiability has long been recognized and acknowledged.²³ Section 189(1) of the CAMA now allows free transferability of all debentures. It states that except as expressly provided in the terms of any debenture, debentures shall be transferable without restriction by a written transfer in common form and so that the transferee shall be entitled to the debenture and to the moneys secured thereby without regard to any equity, setoff, or cross claim between the company and the original or an intermediate holder. However, under the provisions of sub-section (2), companies are given power of restriction on the transferability of their debenture.

The Governing Law

The law governing negotiable instruments in Nigeria falls basically into three. First, as we saw at the beginning of this chapter, every negotiable instrument, subject to certain exceptions, is a contract or a promise. That being so, they are first and foremost regulated by the general law of contract (common law). Thus, for example, the rules relating to capacity to contract, alteration of written contracts, and interpretation apply to negotiation instruments no less than to other informal contracts.

Secondly, there are those special rules which apply to negotiable instruments only. These are the rules of the law merchants, which, as pointed above, were eventually incorporated into the common law and have via the latter become part of the Nigerian law. These are the rules which give negotiable instruments their peculiar character as instruments for the development of commerce and finance. They form some of the exceptions to the general law of contract referred to in the last paragraph.

Thirdly, there are the rules governing types of negotiable instruments. Some of these developed from commercial practice while the other are the products of statutes. The law governing Bills of Exchange in Nigeria is primarily the Bills of Exchange Act 1990 (Cap. 35).²⁴ This is a re-enactment and codification of the Bills of Exchange Acts 1917 (cap. 21) and 1964 (No. 20) into one statute. The former is virtually a latter made provisions similar to those of the English Cheques Act

²³ *Godwin v. Roberts, supra*, (1902) 2 K.B.D. 144.

²⁴ In this Chapter, any reference to the “Act” unless otherwise indicated means Bills of Exchange Act 1900 (Cap. 35).

1957. The provisions of the Bill of Exchange Acts apply not only to bills of exchange but also to cheques and promissory notes.

Bill of exchange

Section 3 of the Bill of Exchange Act 1990 defines a bill of exchange as

1. An unconditional order in writing addressed by one person to another, signed by the person giving it requires the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer;
2. An instrument which does not comply with these conditions, or which orders any Act to be done in addition to the payment of money. Is not a bill of exchange.

It is pertinent to point out here that sub-section (2) does not state or mean that any instrument which falls outside the definition contained therein is invalid. It merely states that such an instrument fails to qualify as a bill of exchange. The conditions referred to therein generally mean the statutory requirements or essential elements or characteristics of a bill of exchange. These are the necessary ingredients that an instrument should contain in order to obtain that faculty. They therefore would require further examination elucidation for proper understanding and appreciation.

Essential Element or Characteristics

There are basically nine of these and include the following.

a. *An Order*: The directive must be in the form of an order, that is an authoritative direction, injunction or mandate, e.g. “pay X or order the sum of ₦100.00”. It was held in *Hamilton v. Spottiswoode*²⁵ that a directive stating that “we hereby authorize you to pay on our account, to the order of G. 6000 :LZ”, at certain specified period is not an order, because it does not import an absolute intention that the money should at all be paid, but merely an authority to pay.

An order for this purpose may be couched in courteous terms, for example, “please pay X or order the sum of ₦100.00. However, a request is not sufficient. Thus it was held in *Little v. Slackford*,²⁶ that a directive to “please let the bearer have seven pounds, and replace it to my account and you will oblige” is not an order.

b) *Unconditional Order*: The order must be unconditional in order to ensure that the promise is enforceable. Payment upon a contingency is conditional since the event on which the payment depends may or may not happen. Consequentially, the holder may or may not be entitled to any sum. Even when

²⁵ (1849) 154 E.R. 1182, at p.1186

²⁶ (1828) 173 E.R. 1120

the even happens subsequently, this will not cure the defect.²⁷ Ashurst, J., in *Carlos v. Fancourt*,²⁸ stated on this that:²⁹

Certainty is a great object in commercial instruments; and unless they carry their own validity on the face of them, they are not negotiable: on that ground bills of exchange which are only payable on a contingency, are not negotiable, because it does not appear on the face of them whether or not they will ever be paid.

According to sub-section (3) an order to pay out of a particular fund is not unconditional within the meaning of the section. The rationale is because it is possible for the fund to exhaust before payment is due. Thus, “pay Y or order the sum of ₦500.00 from my No. 2 account” is conditional. However, the same sub-section states that an unqualified order to pay coupled with an indication of the particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or a statement of the transaction which gives rise to the bill is unconditional.³⁰ An example is found in the statement “pay Y or order the sum of ₦500.00 and debit my No. 2 account”, or “pay Y or order the sum of ₦500.00 for value received.”

An order to pay coupled with a direction to sign an accompanying receipt may or may not be conditional. It is made conditional upon the signing of the receipt appended to the order. Thus in *Bavins Junior and Sims v. London South Western Bank*,³¹ the order to pay was accompanied by an instruction stating a follows: “provided the receipt form at foot hereof is duly signed, stamped and dated” it was held that this instruction rendered the instrument conditional. On the other hand in *Nathan v. Odgers. Ltd.*,³² the order to pay was accompanied by an instruction stating that “the receipt on the back must be signed, which signature would be taken as an endorsement of the cheque”. It was held that the document was negotiable instrument because the words at the foot were not addressed to the drawee by the payee.

b. *In Writing*: The order must be in writing, which ordinarily includes ordinary handwriting, typewriting, typesetting, printing and other form of modern lithography. It has been held that the writing itself could be in ink or pencil.³³ The language in which the order is drawn is immaterial. Thus, in *Arab Bank Ltd. v. Ross*,³⁴ the endorsement of two promissory notes was partly in Arabic and partly in English and it was nevertheless held that the notes were valid.

²⁷ S. 11(2), para. 2 of the Act

²⁸ (1794) 101 E.R. 272.

²⁹ *Ibid*, at p.274

³⁰ S. 3(3) of the Act

³¹ (1900) 1 Q.B.D. 327.

³² (1905) 93 L.T. 553.

³³ *Geary v. Physic* (18) 108 E.R. 87, p.88

³⁴ (1952) 2 Q.B.D. 216

The order may be written on any substance provided this is capable of physical delivery. Thus instructions have been written on a cow and on the shirt of the drawer.³⁵

The rationale for the requirement of writing is ensure, as far as may be possible, permanency and to avoid uncertainty or dispute regarding the extent of any party's obligation. In this respect, it is said that "the faintest ink is better than the sharpest memory."

c. *Addressed by One Person to Another*: The order must be addressed by one person (drawer) to another (drawee). Ordinarily, in law, a person includes a body of persons whether incorporated or not. Thus, individuals, firms, as well as corporate bodies are persons for this purpose. In *Mason v. Lack*,³⁶ an instrument signed by a person as drawer but not addressed to anyone, and accepted by other persons, was held to be not a bill of exchange but a promissory note.

The order may be addressed be the drawer to himself or to a fictitious person or a person without contractual capacity. In such cases, section 5(2) of the Act provides that the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

The order may be addressed to two or more persons as drawees, but not in the alternative or in succession. However, in all cases the drawer must be named with reasonable certainty.³⁷

b) *Signed By the Person Giving It*: The instrument must be signed by the drawer either personally by his own hand or by some other person acting under his authority.³⁸ The requirement of signature gives rise to some difficulty principally because the Act has not defined what constitutes "a signature" for this purpose.

Signature for this purpose could mean writing the names in full, the initials or thumb impression of the person signing, or any acknowledged mark. Thus *George v. Surrey*³⁹ the mark "X" established by evidence to represent the true signature of the drawer was accepted, and in *Caton v. Caton*,⁴⁰ the House of Lords held that a signature by initials is sufficient.

There is no direct authority as to whether the use of rubber stamp without more is sufficient. In *Bennette v. Brumfit*,⁴¹ Bovil, C.J. acknowledged that the ordinary mode of affixing a signature to a document is not by the hand coupled with some instruments such as pen or pencil. In this regard he saw no difference

³⁵ McLoughlin, *Introduction to Negotiable Instruments*, Butterworths, (Lond.) 1st edn. At p.38

³⁶ (1929) 45 T.L.R. 362

³⁷ S. 6 of the Act

³⁸ Ss. 9(1) 24 & 25 of the Act

³⁹ (1830) M. & M.

⁴⁰ (1867) L.R., 2 H.L. 143

⁴¹ (1867) L.R., C.P., 28.

between using a pen or pencil and using a rubber stamp, where the impression put on the paper by the proper hand of the party signing. In *Goodman v. J. Eban Ltd.*,⁴² it was held that since the particular letter bore a signature placed there by the plaintiff's solicitor himself by means of a rubber stamp containing a facsimile representation of his own signature, he had "signed". Lord Denning dissenting however pointed out that:⁴³

The virtue of a signature lies in the fact that no other persons write exactly alike and so it carries on the face of it guarantee that the person who signed it has given his person attention to the document. A rubber stamp carries with it no guarantee: because it can be affixed by anyone.

d. *Requiring the Payment of Money.* The order must require the person to whom it is addressed (drawer) to pay money to the payee only. It must not include the doing of something else either in addition or in alternative to the payment of money. Section 3(2) of the Act, as already pointed out, provides, *inter alia*, that an instrument which orders any Act to be done in addition to the payment of money is not a bill of exchange. Consequently, in *Smith v. Boheme*,⁴⁴ a note in which the drawer promised "to pay J72 upon demand for value received or rendered the body of A.B. & Co. to the fleet" was held not to be negotiable instrument. This is variably so since the drawer made alternative promises, one involving the payment of the sum mentioned while the delivery of the said body.

e. *On Demand or at a Fixed Determinable Future Time.* The date on which a bill falls due is essential for it is on this that the liabilities of the parties primarily rest. It is essential too for it enables the holder to know or discover when he can present the bill for payment and if need be to give notice of any dishonour within the statutory limit allowed under section 49(1) of the Act. It is not necessary however, that such date is known or determined at the time the bill was drawn or even accepted since this may depend on subsequent events, such as even accepted since this may depend on subsequent events, such as sighting the bill or occurrence of a specified event which bound to happen.

The phrases on demand and at a determinable future are further explained in section 10 and 11 of the Act respectively. By section 10(1) a bill is payable on demand if it is expressed by payable on demand, at sight, or on presentation with no time for payment being expressed. These have the same or similar effect in the payment in those circumstances is contemporaneous. Under Section 11, a determinable future time means a fixed period after date or sight, or on or at a fixed period after the occurrence of a specified event which is bound to happen,

⁴² (1954) 1 Q.B.D. 550.

⁴³ *Ibid*, at p.561

⁴⁴ (1724) (3 E.R. 271.

even though at time the bill was drawn the Actual date of occurrence is uncertain. Sub-section (2) of the same section dates that this does not include payment on a contingency and that in that circumstance the happening of the expected even does not cure the defect.

In *Williamson v. Rider*,⁴⁵ the English court of Appeal had to decide whether or not promising pay £100 “on or before 31st December 1952” was payable at a “fixed or determinable future time”. Danckwerts and Willmer L.J. (Omerod, L.J. dissenting) held that the option reserved by the document to pay at an earlier date than the fixed date (i.e. 31st December 1956) created an uncertainty and contingency in the time for payment, and that, accordingly, the document could not be a promissory note within the meaning of Section 83 of the English Bill of Exchange Act 1882.⁴⁶

f. *A Sum Certain in Money*: The order must be for the payment of a definite or specific sum of money which payment must be made in legal tender. In *Smith v. Nightingale*,⁴⁷ a promise to pay “the sum of £45...and also all other sums which may be due to him” was held not to be a certain sum. Lord Ellenborough was of the opinion that the instrument was too indefinite to be considered a promissory note for it contained a promise to pay interest for a sum not specified, and not otherwise ascertained than by reference to the defendant’s books and that since the whole constituted one entire promise, it could not be divided into parts.⁴⁸

By virtue of section 9(10)(a) and (b) of the Act the sum payable is still “certain” although it is required to be paid with interest or by stated instalments with or without penalty clause. It has been held in this not indicated or agreed, the court should adopt the current rate interest prevailing in the business or profession.⁴⁹ In *Darrhouwer & Co. Ltd. v. Christian & Co. Ltd. & Anor.*,⁵⁰ a Lagos High Court held that if the amount of interest on the bill is payable on an uncertain date and the date of determination of the payment of interest is uncertain, the sum payable is uncertain on the date drawn and the bill is not valid within the meaning of section 3(1) and 9(1)(d) of the Act and therefore is not negotiable.

It is further provided in section 9(1)(d) that the sum payable would still be certain even though it is required to be paid “according to an indicated rate of exchange or according to a rate of exchange to be ascertain as directed by the bill.” If the bill is drawn in a foreign country but payable in Nigeria, and the sum

⁴⁵ (1963) 1 Q.B.D. 89

⁴⁶ (1963) 1 Q.B.D. 89, at pp.98 & 100

⁴⁷ (1818) 171 E.R. 677

⁴⁸ (1818) 171 E.R. 677, at p.678

⁴⁹ *Re Tillman* (1918) 24 T.L.R. 322

⁵⁰ (1967) N.C.L.R. 434

payable is expressed in some other currency, the amount, in the absence of any expressed stipulation is to be paid at the rate of exchange payable on sight drafts at the place and on the day of payment.⁵¹

Section 3 subsection (2) of the Act, as already pointed out above, provides, *inter alia*, that an instrument which orders an Act to be dobe in addition to payment of money is not a bill of exchange. In *Smith v. Boheme, supra*, a note on which the drawer promised to pay £72 or render the body of A.B. to the fleet before a certain dare was held not to be negotiable.⁵²

g. *To or to the Order of a Specified Person or to Bearer*: A bill must be made payable to a specified person or to his order or to bearer. A bill payable to a specified person without the inclusion or order is still payable to his order provided that the bill does not also contain restrictive indorsement indicating non-transferability.⁵³ In *North South Ins. Corpn. Ltd. v. National Provincial Bank Ltd.*,⁵⁴ it was held that instrument made payable to “cash or order” is not a bill because the word “cash” could not be considered as a specified person” within the meaning of the Act.

According to Section 8(3) of the Act, a bill is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an indorsement in blank. Under section 7(1), it is provided that where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. By sub-section (2) of the same section, a bill may be made payable to two or more persons jointly or in the alternative to one of two persons or to one or some of several persons or to the holder of an office for the time being. By sub-section (3), it is provided further that where a bill is payable to a fictitious or non-existing person, the bill may be treated as payable to bearer.

More important under the last mentioned sub-section is the meaning of the descriptive words fictitious and no-existing person. In *Bank of England v. Vagliano*,⁵⁵ a bill was made payable to a real and existing person but whom there was no indebtedness, the House of Lords held that the payee was a fictitious person. Lord Watson stated that⁵⁶ the language of the sub-section, taken in its ordinary significance imports that a bill may be treated as payable to bearer in all cases where the person designated as payee on the face of it is either non-existence, has not and never was intended to have any rights to its contents.

⁵¹ S. 72(d) of the Act

⁵² *Supra*, note 18

⁵³ S. 8(4) & (5) of the Act.

⁵⁴ (1936) 1 K.B.D. 328

⁵⁵ (1891) A.C. 107.

⁵⁶ *Ibid*, at p 134, per Lord Watson.

But in *Clutton v. Attenborough*,⁵⁷ the drawer fraudulently inserted as payee George Brett, an imaginary name. The same House of Lords held that the bill was payable to a non-existing person. Lord Halsbury, L.C. observed that⁵⁸ “whatever might have been said in Vagliano’s case where there were questions raising a doubt...about the difference suggested that on the face of these instruments the name of George Brett is anything other a name of a non-existing person.”

The two decisions cannot be wholly reconciled since an imaginary name can refer to a person existing in some part of the world. It has therefore been suggested that they would be more easily reconciled if the Act had used the words “where the payee is fictitious or non-existing.”⁵⁹

Defects, Deficiencies and Irregularities

A bill which complies with the statutory definition will not generally be declared invalid merely because of some defect, irregularity or deficiency in some other respect. This however is subject to the proviso that such defect, irregularity or deficiency does not materially alter the express intention of the parties. Thus, if the bill is thereby rendered irregular or incomplete, it would have lost one of its attributes as a negotiable instrument in that the transfer of the rights created by it becomes subject to equities.

The decree expressly provides for the method of curing certain defects, irregularities or deficiencies on a bill. Thus in section 3(4) of the Act, it is provided that a bill is not invalidated by reason of the Act that it is not dated or does not specify the place where it is drawn or where it is payable. Furthermore, section 9(2) provides that where the sum payable is expressed in words as well as in figures, and there is discrepancy between the two, the former prevails. Sub-section (3) of the section also provides that where a bill is payable with interest, unless the bill provides otherwise, interest is calculated from the date of the bill or if undated from the date of issue thereof.

Types of Bills

Broadly speaking, there are two principal types of bills, namely, the inland bill and the foreign bill. Either type may also be a bearer, a demand or an order bill. Each of these may be examined.

a. **Bearer Bill:** This refers to a bill expressed to be payable to bearer or on which the only or last indorsement is an indorsement in blank.⁶⁰ A bill may also be treated as a bearer bill if it is payable to a fictitious or non-existing person.⁶¹

⁵⁷ (1897) 66 L.J. Q.B. 221

⁵⁸ Ibid, at p.223, per Lord Halsbury.

⁵⁹ McLoughlin, *op. cit.* at p.51

⁶⁰ S. 8(3) of the Act, and see p., ante

⁶¹ S. 7(3) of the Act, and see p., ante

b. ***Demand Bill***: This refers primarily to a bill expressed to be payable on demand. According to section 10(1) of the Act, a bill is payable on demand which is expressed, *inter alia*, to be payable on demand or a sight or in which no time for payment is expressed. Furthermore, sub-section (2) of the same section provides that where a bill is accepted or indorsed after it has become overdue, it shall as regards the acceptor or any indorsee, be deemed a bill payable on demand

c. ***Order Bill***: this bill expressed to be payable to a particular person with or without the words, or order, provided it is not accompanied by any restrictive words indicating non-transferability.⁶² An order bill may be contrasted with a bearer bill, the difference being that the former can only be negotiated by indorsement whereas the latter can be negotiated by simply delivery.

d. ***Inland/Foreign Bill***: An inland bill is a bill which is, or on the face of it, purports to be drawn and payable within the Republic of Nigeria upon some persons resident therein.⁶³ Thus, all the specimen bills written above are inland bills. An inland bill however, does not cease to be so merely because the payee is resident in a foreign country or that a subsequent indorsement was effected in a foreign country.

A foreign bill by contrast, is a bill which is, or on the face of it, purports to be drawn or payable outside the republic of Nigeria or drawn within Nigeria upon some persons resident outside. It refers to a bill which is either drawn by a person who is resident in Nigeria but on a person resident outside Nigeria and is payable outside Nigeria. The Act makes further distinction between an inland bill and a foreign bill by providing that the former may be noted for dishonour whereas the latter may be protested.⁶⁴

e. ***Other Bills***

(i) ***Undated Bills***: in addition to section 3(4) mentioned earlier, section 12 of the Act provides further explanation in this regard, it states that:

Where a bill expressed to be payable at a fixed period after date is issued undated, or whereas the acceptance of a bill at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

A practical example will suffice to illustrate this. A bill which is undated may be worded as follows, “Ninety days after date, pay Mr. A. A. Adewale & Co., the sum of ten thousand naira, for value received”. In this case we cannot ascertain the date at which the bill matures because time starts to run from the date of the bill. But no date was inserted on this bill. The bill is therefore incomplete, for the

⁶² S. 8(4) & (5) of the Act.

⁶³ S. 4(1) (a)(b) of the Act.

⁶⁴ S. 51 of the Act

date determines when payment can lawfully be demanded. However, section 12, *supra*, cures this by allowing any holder of such a bill to insert the true date of issue probably from the drawer, well and good, but if he does not know or cannot ascertain this, he may be constrained to guess the date. If his guess is right again no problem may arise but if he guesses wrongly and inserts a date which proves to be wrong a further difficulty is raised, namely, that of a bill bearing a wrong date.

Wrongly Dated Bills: the proviso to section 12, *supra*, gives some solution in this regard. It states that if the holder of a bill dates it wrongly and did so in good faith and by mistake, the bill shall not be voided thereby if it subsequently came into the hands of a holder in due course. It shall in that case, in lieu, operate and be payable as if the wrong date so inserted was the true date. The reason undercuts the strong position of the holder in due course who cannot be affected by any defect in the title of any person who negotiated the bill prior to its coming into his hands.

Ante-dated or Post-dated Bill: Section 13(2) of the Act states that “a bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date of a Sunday”. In order to appreciate the true significance of this provision it may be necessary to examine the position with regard to cheques. The general effect of post-dating, for example, is that payment cannot lawfully be demanded or made until the date: exchange payable on demand within the meaning of section 73 of the Act. It is that section 13(2) sets out to cure. Accordingly, *Hitchcock v. Edwards and Anor*,⁶⁵ an English court held that a post-dated cheque sufficiently stamped is valid and a negotiable instrument, and that it is “complete and regular upon the face of it” within the meaning of section 29 of the English Bill of Exchange Act 1882. An ante-dated bill causes little difficulty and the Act that it was ante-dated may apparently not be known to at least some of the parties subsequently concerned as the bill could have become due before it came into their hands.

Inchoate Bills: Such Bills is sometimes referred to or called a “skeleton bill”. This refers to a bill which has not been completely drawn by virtue of the Act that some words, names amount or signature have been knowingly or otherwise left out. A formal example is a “blank cheque” in which the amount payable or the payee’s name may be left out with the intention that they should be completed by the payee subsequently. Section 20(1) of the Act provides, *inter alia*, in such a situation that “when a bill is wanting in any material particular, the person in possession of it has prima facie authority to fill up the omission in any way he think fit.” However, sub-section (2) states that “in order that any such instrument

⁶⁵ (1889) 60 L.T. 636.

when completed it must be filled within a reasonable time, and strictly in accordance with the authority given.” Reasonable time for the purpose is said to be a question of Act.

In *Griffiths v. Dalton*,⁶⁶ an undated cheque was delivered to the payee in August 1931. Two and a half years later the date 20th February 1933 was inserted by the payee who then presented the cheque for payment. It was dishonoured and he brought this Action. Macnaghten, J. held that a banker is not bound to honour any undated cheque. He held further that the prima facie authority to fill in the date given by section 20 of the English Bills of Exchange Act 1882 to a person in possession of the cheque must, at common law, be exercised within a reasonable time and a half years was a reasonable lapse of time for this purpose.

The Parties to a Bill

The capacity to be a party to an incur liability, as such, on a bill is co-extensive with the capacity of such a person to contract.⁶⁷ Consequently, it is important to take particular note of persons with limited capacity or no capacity at all to contract, such as, infants, insane persons and corporations. As regards such persons, section 22(2) of the Act provides that:

Where a bill is drawn or endorsed by an infant, minor or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it to any other party thereto.

It is pertinent to point out here that this provision does not refer to bills accepted by such persons but to those drawn or endorsed by them. The implication is that such a person cannot be liable as drawer or endorser. This does not however release from liability the drawee\acceptor or other endorsers whether signing before or after the incapacitated indorser. The reason is because all of them as parties to the bill remain independently or severally liable thereon. The practical effect of this is, for example, that if the drawer is not liable because he is incapacitated, all the indorsers as promisors that the bill will be paid according to its tenor liable severally to the holder if there is a breach of that promise.

In this case of an infant it has been held that he is not liable on a bill even if it was accepted or given for necessities.⁶⁸ The infant however may remain liable for a reasonable price for the breach of the contract in performance on which the bill was given or accepted. His liability in this regard is independent and distinct from that on the bill itself and therefore the one cannot extinguish the other.

⁶⁶ (1946) 2 K.B.D. 264.

⁶⁷ S. 22(1) of the Act.

⁶⁸ *Re Solfukoff, Ex. Parte Margrette* (1891) 1 Q.B.D. 413

The phrase parties to a bill use generally to refer to those persons liable on the bill. But as pointed out earlier, a person may be a party to bill but exempted from liability. Parties to a bill comprise the drawer, drawee, acceptor, indorser, or holder including a holder in due course. The drawee/acceptor is usually referred to as the primary party because his liability is unconditional. The other persons mentioned are the secondary parties, so referred because their liabilities are conditional. The conditionality's as well as the extent of the liability of each party are discussed shortly.

The Drawer

The drawer is the person who prepares (draws) the bill ordering or requiring the payment of money to be made. The law requires that he must sign the bill either personally or by someone having his authority.⁶⁹ By so drawing and signing the bill, a contingent obligation arises on his part. Section 55(1) of the Act provides in this regard that by so doing he engages that on due presentation it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceeding or dishonour be duly taken.

The drawer, although the originator of the bill, has only a secondary liability in the sense that he is only liable in the event of dishonour by the acceptor and even at that, provided that the requisite proceedings for dishonour has been taken. According to that above provision, the drawer has to compensate any party who lost through the bill not being accepted or paid. If the bill has been negotiated before acceptance was refused the drawer is the person ultimately liable on the bill, which is somehow primary. The holder can recover compensation from any indorser who in turn can recover from any previous indorser or the drawer. If the bill has been accepted but payment has been refused, the drawer in turn can recover from the acceptor who is the person primarily liable in that case. However, the drawer may insert in the bill an expression negating or limiting his own inability to the holder or waiving as regards himself some or all of the holder's duties.⁷⁰ An exceptional case is whereby the expressly states that he is to incur no liability, such as, by qualifying his signature by the inclusion of the word "without recourse" or words of like effect

In *Reuguette v. Overmann*⁷¹ it was been held that the drawer stands in relation to the acceptor as a surety to the principal debtor. Cockburn C.J. (English) explained this as follows:⁷² "All that he does is to warrant that the bill is

⁶⁹ S. 91(1) of the Act.

⁷⁰ S. 16(1)(2) of the Act

⁷¹ *Reuguette v. Overmann* (1814) 35 E.R. 391, at p.394

⁷² *Ibid*, at p.394

accepted by the drawer, and having been accepted, shall on being presented on the time it becomes due, be paid. In other words he engages as surety for the due performance by the acceptor of the obligation which the latter takes on himself by the acceptance.”

The Drawee

The drawee is the person to whom the bill, or order is addressed. According to section 6(1) of the Act, he must be named or otherwise indicated in the bill with reasonable certainty. The law has demand this because he is the person ultimately liable on the bill drawn by him. Thus as the drawee he is not liable on the bill, unless and until he accepts it thereafter he becomes liable as the acceptor.⁷³

Despite the rules as to certainty, a bill may be addressed to two or more drawees whether they are partners or not but not in the alternative nor as drawees in succession.⁷⁴ The reason is that when a bill is addressed to two or more drawees and being in the alternative or in succession, the drawees become joint parties and liable individually and jointly. In case of breach the holder may proceed against any of them. On the contrary when they are liable in the alternative or in succession, then the holder may proceed the prior party and only proceed against the alternative or successive party if the prior and only proceed against the alternative or successive party if the prior party defaults. There is therefore no certainty of the parties liable at any material time.

The drawee and the drawer may be one and the same person; accordingly a bill may be drawn payable to or to the order of the drawee. Where the drawer and the drawee are the same person not having capacity to contract, the holder may treat the instrument at his option, either as a bill, or as a promissory note.⁷⁵ In *Mason v. Lack*,⁷⁶ an instrument in the form of a bill signed by a person as drawer but not addressed to anyone, and accepted by other persons, was held to be a promissory note and not a bill of exchange.

The Acceptor

The drawee and the acceptor are one and the same person. As the drawee, he is the person to whom the bill or order is addressed but once he acknowledges the liability on the bill, he becomes the acceptor. Thus section 17(1) of the Act states that “the acceptance of the bill is the significance by the drawee of his assent to the order of the drawee.” As the acceptor of the bill, he is the person primarily liable on the bill on its due date. The holder must first look to him for payment and

⁷³ S. 53(1) of the Act.

⁷⁴ S. 65(2).

⁷⁵ S. 5(2)

⁷⁶ (1929) 45 T.L.R. 363.

only proceeds against any subsequent indorser after treating the bill as dishonoured and having taking the requisite step thereafter.

Under section 54 of the Act, the acceptor, by accepting a bill undertakes to pay it according to the tenor of acceptance. In *Food Preserving and Canning Industry Ltd. v. Nasser*⁷⁷ the plaintiff sued the defendant for the dishonour by non-payment of three bills of exchange accepted unconditionally by the latter. The defendant argued, *inter alia*, that the bill was dishonoured because the goods shipped to them on account of which the bills were issued and accepted did not conform with the samples. It was held that by accepting a bill, the acceptor undertakes to pay it according to the tenure of his acceptance and therefore, the defendant's argument was not tenable.

The acceptor is further precluded, under the same section, from denying to a holder in due course:

- a. The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill,
- b. In the case of a bill payable to the drawer's order, the then capacity of the drawer to the indorser, but not the genuineness or validity of his indorsement,
- c. In the case of a bill payable to the order of third person, the existence of the payee and his then capacity to indorse but not the genuineness or validity of his indorsement.

The obligation under (a) is founded on the Act that the drawer is the principle creditor while the acceptor as drawee is the principle debtor. The obligation under (b) and (c) are necessitated by the Act that the acceptor's obligation to pay is primarily to the payee. Since it is the payee who puts the bill into circulation by endorsing it to some other person, the acceptor must necessarily vouch to the existence of the payee and on his competence to perform this Acts.

The Payee

The payee is the person to whom the sum ordered to be paid is payable. He is the person whose name should appear on the face of the bill as the person to whom payment is to be made. It is not unusual for the drawer to make the bill payable to himself by inserting the words "pay self" or "pay to my order" or such like words. He may do this because he wants the money as the principle creditor to the drawee or acceptor or because he wants to transfer it to a third person who would give value for it. Where the drawer enters the name of a third person as payee it is unusually because that other person is or would be his creditor.

⁷⁷ (1962) L.L.R. 2.

Section 7 of the Act regulates the position of the payee of a bill. According to sub-section (1), where a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty. In *Bird & Co. Ltd. v. Thomas Cook & Sons Ltd.*⁷⁸ the payee was described as Messrs. Thos. Cook & Sons Ltd., instead of Thomas Cook & Sons (Banker) Ltd. It was held that although the drawer has mis-described the payee company, he intended the cheque to pass to the company, and the latter therefore had title. By subsection (2) a bill may be payable to (a) two or more persons jointly, (b) one of two persons in the alternative, (c) one or some of several persons and (d) the holder of an office for the time being. Finally, sub-section (3) provides that where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. These provisions have already been discussed.⁷⁹

The Endorser

According to section 56 of the Act an endorser signifies any person who signs a bill otherwise than as drawer and acceptor. His obligations as an endorser are set out under section 55(2) of the Act. According to this the endorser of a bill by endorsing it, engages that on the presentation it shall be accepted and paid according to its tenor, and presentation it shall be accepted and paid according to its tenor, and that if it is dishonoured, he will compensate the holder or subsequent endorser who is compelled to pay it, provided that the requisite proceedings on dishonour have duly been taken. Furthermore, he is precluded from denying (a) to the holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements, and (b) to his immediate or subsequent endorsee that the bill was at the time of his endorsement a valid and subsisting bill, and that he has then a good title thereto.

An endorser, as a subsequent transferee, and the drawer are jointly and severally responsible to a holder in good faith without notice for the due acceptance and payment of the bill. Like the drawer, an endorser has to compensate any subsequent party who has lost as a result of the dishonour of the bill. Like the drawer also, he stands in relation to the acceptor or surety,⁸⁰ and he cannot avoid his liability by attacking the signature of the drawer or an earlier endorser. Furthermore, like the drawer and the acceptor, an endorser is presumed to have held out the bill and title thereto to his immediate transferee and through him subsequent transferees as valid and genuine. He cannot therefore attack the validity of the bill or his own title thereto, in order to evade his liability on the bill.

⁷⁸ (1931) 2 LL E.R. 227.

⁷⁹ P., ante.

⁸⁰ Cockburn, C.J., in *Ruequette v. Overmann*, *supra*, at pp.394-395.

In *Metalimpex v. A.G. Leventis*,⁸¹ the Supreme Court had occasion to pronounce on the liability of an endorser within the meaning of the provisions of section 55(2) of the Act. In that case, the appellant company agreed with one of its directors to a scheme whereby some debts would be discharged by twelve equal instalments guaranteed by debtors and payable to the order of the appellant company. They were accepted by the debtor and properly endorsed over by a director of the respondent company. When some of the bills were dishonoured, the appellant company brought this Action against the respondent company as an endorser and alternatively against it as surety. The court held that it is a settled law that whereas endorser of a bill is the person to whom it was presented for payment, when it was dishonoured by non-payment, it is not necessary to serve him a notice of dishonour.

Holder, Holder for Value

Under section 2 of the Act, a “holder” is defined as “the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof”. Thus, in the case of an order bill, he is the payee or any subsequent endorsee who at the material time is in possession of the bill. In the case of a bearer, he is the person who at the material time is in possession of the bill. In this latter case, it was stated in *Sutter v. Briggs*, that the test is “possession so that anyone in possession including a “finder” and a “thief” is a holder thereof.”⁸²

It should be noted here that the possession of a negotiable instrument is not necessarily the holder. A thief who is in possession of an instrument he has stolen can be used to illustrate this. If the instrument concerned is a bearer bill or note, he cannot be the holder since he will be neither the payee nor an endorsee of it. Secondly, the holder of a bill or note is not necessarily the owner of the instrument. Thus in the case of the stolen bearer bill or note, the thief will become the holder but not the owner. Similarly, where X endorses a bill or note to Y, for collection only, Y becomes the holder of the instrument but he is not the owner of it. Ordinarily, the bearer in the case of a bearer bill or note, and the payee or endorsee in the case of an order bill or note, will be both the holder and the owner. But there are circumstances when the owner of the same time, one person is the holder and another the owner of the same instrument. In such a case the owner has a right of Action against the holder for the return of the instrument, if there is need.

A holder of a bill or note may not have given value for it. A thief or finder of a bearer bill or note, a donee or an agent for collection of an order bill or note, is

⁸¹ (1976) 1 All N.L.R. 84

⁸² (1922) A.C. 1, at p.15. per Lord Birkenhead, emphasis mine.

more unlikely to have given value for the instrument he is now in possession of. If a holder has given value for a bill or note, he becomes a holder for value of the instrument as against all persons who previously have become parties to it. The term value is defined by section 2 of the Act as valuable consideration for a bill or note may be constituted by (a) any consideration sufficient to support a simply contract, or (b) any antecedent debt or liability. It is therefore pertinent to point out here that this definition is wider than the common law contractual consideration.

The meaning of valuable consideration under the equivalent provision in the English Bill Of Exchange Act 1892 was discussed in some detail in *Oliver v. Davis*.⁸³ There, an English Court of Appeal held, *inter alia*, that to satisfy the provision, the antecedent debt or liability must be either that of the promiser or drawer or if a third party, then at least there must be some relationship between the receipt of the bill or note and the antecedent debt or liability, such as forbearance or a promise to forbear, express or implied, on the part of the recipient in regard to the third party's debt or liability.

A holder may be a holder for value of a bill or note even though he has not himself given value for the instrument. Thus, section 27(2) of the Act states that where value has not been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. Consequently, a holder who has not himself given value for the instrument may become a holder for value only in respect of the parties mentioned in the subsection. In *Diamond v. Graham*,⁸⁴ H obtained a cheque from the defendant in favour of the plaintiff and at the same time, H gave the defendant a cheque for the same amount to settle some indebtedness. Both cheques were subsequently dishonoured and in an Action by the plaintiff won the cheque drawn by the defendant, it was argued that the plaintiff was not a holder for value because no value had passed between him and the defendant. It was held that there was nothing in section 27(2) which requires values to be given by the holder, so-long as value had been given to the instrument.

Section 27 provides further in sub-section (3) that where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has the lien. Thus, for example, if a bill is deposited in a bank as security loan, the bank becomes a holder for value to the extent of the loan. In *Lloyds Banks v. Hornby*,⁸⁵ it was held

⁸³ (1949) 2 K.B.D. 727.

⁸⁴ (1968) 1 W.L.R. 1061.

⁸⁵ *Financial Times*, July 5, 1983

that a banker, who makes an advance against a cheque at the time when it was paid in, becomes for the value of the cheque.

Finally, section 30(1) of the Act provides that every person whose signature appears on a bill is, *prima facie*, deemed to have become a party thereto for value. It is pertinent to point out here that before the presumption can validly take effect, it should be proved that the instrument concerned is a bill. As Bramwell L.J. said in *Hogarth v. Latham & Co*⁸⁶ “A bill of exchange supposes value, and is a negotiable instrument, but am not at all sure that a man who takes what is not a negotiable instrument has a right to presume any value, or that he does take it at his peril if there is no value.”

This is a rebuttable presumption and can be rebutted by evidence showing, for example, that the presumed holder for value has in Act given a value or is guilty of fraud, illegality, misinterpretation or duress. Thus in *Metalimex v. A.G. Leventis Ltd.*, *supra*, it was held that a bill of exchange is deemed to stand on the basis of valuable consideration and the onus is on the party who alleges want of consideration to prove the same.

Holder in Due Course

A holder in due course is defined under section 29(1) of the Act as:

A holder who has taken a bill, complete and regular on the face of it under the following conditions, namely,

- a. That he became the holder of it before it was overdue and without notice that it had previously been dishonoured, if such was the Act;
- b. That he took the bill in good faith and for value and that at the time that bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it.

During the preparation of the English Bill of Exchange Act 1882, the expression “holder in due course” was substituted for the older expression “bona fide holder for value without notice.”⁸⁷ Thus broadly speaking, a holder in due course of bill means the same as a bona fide holder for value of the bill without notice of any defect in the title of the transferor. Before examining in some detail the elements that make up a holder in due course it is pertinent to point out that while some of these elements relates to the bill itself others pertain to the parties to the bill.

a. *Must Be a Holder.* First and foremost, a holder in due course must be a holder within the meaning of the Act. We may recall that the meaning and

⁸⁶ (1878) 3 Q.B.D. 643, at p.642

⁸⁷ *Chalmer's Bills of Exchange*, 13th edn., 1964, at p.89.

significance of this term was discussed under the last preceding heading. There is nothing to suggest that a different meaning or significance is intending here.

b. *Must Have Taken the Bill*: Secondly, the holder must have taken the bill. This invariably means that he must have had the bill negotiated to him in due process. Consequently, the original payee whose name appears on the bill may not qualify as a holder in due course since being the first holder, there was never a negotiation to him, Lord Cave, L.C. propounded this view in *Jones v. Waring and Gillow*, where he argued that although the term holder in relation to a bill of exchange is defined to include the payee thereof, it appears from section 29(1) that a holder in due course is a person to whom a bill has been negotiated and from section 31 that a bill is negotiated by being transferred from one person to another and if payable by order by endorsement and delivery, in view of those provisions, he mentioned, it is difficult to see how the original payee can be a holder in due course within the meaning of the Act.⁸⁸

c. *The Bill is Complete*: Thirdly, at the time of the negotiation to the holder, the bill must be complete on the face of it, generally, a bill or note is taken to be incomplete where it contains some blanks as to the amount or particulars of a party or wanting in any other material particular.

A holder of a bill or note with blanks will usually fill up the blanks before negotiating it. The question then arises as to whether by so doing, himself or a subsequent holder thereafter can be a holder in due course. In *Hogarth v. Latham & Co. supra*, an instrument purported to be a bill had the drawer's name in blank but subsequently accepted by another party. It was held that the holder was not a holder of a negotiable instrument for value without notice. This decision however has been overruled by section 20(1) of the Act which allows a holder to fill up any omission in a bill or note in any way he thinks fit. By virtue of this new provision, an incomplete instrument may be completed by any person who finds himself in possession of the instrument. However, he does so not on the ground that the said instrument is a negotiable instrument but on the assumption that the drawer when he parted with it must be taken to have given authority to anyone into whose hands it might come to fill the blanks.

This does not render the bill or note a negotiable instrument but an authority has been given to a bona fide holder into whose hands it may come to make it a perfect instrument. An intention on the part of the drawer or endorser that the blank or incomplete document shall be converted into a negotiable instrument is essential to liability. There must be *animus amittendi*.⁸⁹ However, section 20(2) limits the extent to which such authority can be exercised. It

⁸⁸ (1946) K.B. 422; *Yeoman Credit Ltd. v. Gregory* (1963) 1 All E.R. 244, 253-4

⁸⁹ *Lloyds Bank v. Goke* (1907) 1 K.B. 794

provides that such an instrument when completed will be enforceable only against a prior party before the completion and if it was completed within a reasonable and in accordance the authority so given.

d. *The Bill in Regular*. Fourthly. At the time the bill was negotiated to be the holder, it must be regular on the face of it. Generally, a bill is said to be irregular if an endorsement on it has an effect on the legal status of the instrument or any party thereto. For example, if a bill is endorsed with the words not negotiable or not transferable, the bill is irregular since the effect on the bill by each of them is to negate the cardinal requirements of a bill of exchange, namely, negotiability and transferability, respectfully.

The irregularity must be such that puts the holder on inquiry. Thus in *Arab Bank Ltd. v. Ross*,⁹⁰ a promissory note payable to the firm Faithi and Faysal Nabulsy & Co. was endorsed by one of the partners, who had authority to do so, to the plaintiffs as Faithi and Faysal Nabulsy, the word “company” being omitted. It was held that although the endorsement was valid to pass the title in the note to the plaintiff, the omission of the word company would give rise to a reasonable doubt whether the payees and the endorers were necessarily the same. Therefore, the note could not be said to be complete and regular on the face of it and the plaintiffs could not succeed as holders in due course within the meaning of section 29(1) of the English Bill of Exchange Act 1882. Denning, L.J. observed that the meaning of “complete and regular on the face of it”, within the section, means that looking at the bill front and back without the aid of outside evidence, it must be complete and regular in itself. Expatriating further, he pointed out that the Act makes a distinction between regularity and validity on the one hand and regularity and liability on the other.⁹¹

In the first instance, for example, an unauthorized or forged signature or endorsement is invalid under section 24 of the Act but may be quite regular on the face of the instrument because there may be nothing about it to give rise to any suspicion. Conversely, an unauthorized or forged signature or endorsement may be irregular but nevertheless valid.⁹² In the second instance, for example, a person who makes an irregular endorsement is liable thereon despite the irregularity. Thus, if a payee who is wrongly described if front of the bill endorses it in his own true name,⁹³ the endorsement is irregular, but he is liable thereon as if he had endorsed it in his own true name. Conversely, a regular endorsement will not impose any liability if it is forged or unauthorized.⁹⁴

⁹⁰ (1908) 24 T.L.R. 494

⁹¹ Ibid, at p. 227

⁹² *Leonarde v. Wilson* (1834) 149 E.R. 895

⁹³ Ss. 23, para (1) and 55 (2) of the Act

⁹⁴ *Kirt v. Blurton* (1841) 152 E.R. 120.

A particular problem is raised where the payee is described in the front of the bill by a wrong name while his endorsement on the back contains his true name and vice versa. Strictly speaking, this makes the endorsement irregular but this can be cured by the payee adding to his endorsement the misnomer by which he was described in the front of the bill. On the other hand, title and descriptions can be omitted without impairing the regularity of an endorsement except where such title or description forms part of the name itself.

e. *The Bill is Not Overdue*: Fifthly, at the time of the negotiation of the bill to the holder, it should not have been overdue. An order bill is said to be overdue if it remains undischarged or unpaid at the date of its maturity. Thereafter, it can only be negotiated subject to any defect in the title affecting it at the date of maturity. Thus, no person who takes it after the date of its maturity can acquire or give a better title to it than that which the person who negotiated it to him had. Therefore, he cannot become or qualify as a holder in due course of the bill.

In the case of a bill payable on demand, it is deemed to be overdue when it appears on the face of it to have in circulation for an unreasonable length of time. Section 36(3) of the Act states that what is an unreasonable length of time for this purpose is a question of fact. This position, by virtue of section 88(3), does not attain to a promissory note payable on demand, which is the nature of a continuing security.

f. *Taken the Bill Without Notice of Dishonour*: Sixthly, the holder must have taken the bill without notice that it had previously been dishonoured, if such was the case. In *Hornby v. McLaren*,⁹⁵ the plaintiff took a cheque knowing that it had previously been dishonoured and it was held that he could not become a holder in due course of the cheque.

A holder would ordinarily have notice of previous dishonour of a bill if he was the holder who presented it for acceptance or payment when it was not accepted or paid, as the case may be. It has been the practice of bankers, whenever a bill is dishonoured to endorse the bill with the reason of dishonour, such as, “refer to drawer”, “no fund”, “insufficient fund” or other similar words, thereafter, any transferee of the bill is deemed to have taken it with the notice of the dishonour and therefore subject to any defect of title attaching thereto at the time of the dishonour.

g. *Taken the Bill in Good Faith*: Seventhly, the holder must have acquired the bill in good faith. As the meaning of the term good faith, section 92 of the Act states that a thing is done in good faith, within the meaning of the Act “where it is in fact done honestly; whether it be done negligently or not”. In *Jones v.*

⁹⁵ (1908) 24 T.L.R. 494

Gordon,⁹⁶ a bill with a face value of one thousand seven hundred and twenty-seven pounds (£1,727) was purchased (negotiated) for a derisory sum of two hundred pounds (£200). It was held that the discrepancy was substantial enough to put on inquiry as to the title of the endorser.

Lord Blackburn, observing as to the legal effect of this, stated as follows:⁹⁷

“If he was...honestly blundering and careless, and so took a bill of exchange or bank note when he ought to have taken it, still he would be entitled to recover. But if the Acts and circumstances are such that the conclusion is that he was not honestly blundering and careless but that he must have had a suspicion that there are something wrong and that he refrained from asking questions not because he was an honest blunder or stupid man but because he thought in his own secret mind-if I suspect that there is something wrong and if I ask questions and make further inquiries, it will no longer be my suspecting, but my knowing it, and then I shall not be able to recover-I think that is dishonesty.”

h. *Taken the Bill for Value*: Eighthly, the holder must have taken the bill for value or given value for it. The meaning and significance of this is that the holder must be a holder for value. This requirement as to value has already been considered above to the definition of “holder for value”. There does not appear to be anything in the decree to suggest that a different meaning or intention is encompassed here.

i. *Acquired the Bill Without Notice of Any Defect*: Lastly, the holder must have acquired the bill without notice of any defect in the title of the person who negotiated it to him. Notice means, first and foremost, Actual knowledge of the fact or circumstances of the particular case or defect therein. Thus for example, in *Banco Populare di Navaro v. John Livanos*,⁹⁸ the plaintiff negotiated a bill, knowing of the insolvency of the custom endorser and knowing that they were being illegally preferred to other creditors. It was held that the negotiation of the bill took place under such circumstances as amounted to fraud under section 29(2) of the English Bills of Exchange Act 1882. The plaintiff was therefore disentitled from recovery. Mocata, J., in this respect said:⁹⁹

If the party to whom the bill is negotiated knows nothing of the fraudulent preference, he will be unaffected by it and will be able to recover on the bill. If, on the other hand,...he knows that the negotiation to him is being made with the intent to defraud creditors, he has only himself to blame, if he cannot recover on the bill.

⁹⁶ (1877) 2 App. Cas. 616.

⁹⁷ *Ibid.*, at p.629

⁹⁸ (1965) 2 Lyds. Rep. 149.

⁹⁹ *Ibid.*, at p.156

In *Raphael v. Bank of England*,¹⁰⁰ a money-changer in Paris, twelve months after he had received notice of a robbery of bank notes, at Liverpool, took one of the stolen notes in Paris. He gave cash for it, less the current rate of exchange from a stranger whom he merely required to produce his passport and write his name on the back of the note. It was held that the circumstances of his forgetting or omitting to look for the notice of the robbery was no evidence of *mala fides*. In the headnote to the report, it was stated that one takes a negotiable security bona fide—that is giving value for it, and having a no notice at the time that the party from whom he takes it has no title—is entitled to recover upon it, even though he may at the time have had the means of knowledge of the Act of which means he relegated to avail himself.

The list of defects in title within the meaning of the provision may not be exhaustive, for it is further provided in section 29(2) of the Act that the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or other circumstances as amount to fraud.

Finally, section 30(2) of the Act provides that every holder of a bill is prima facie deemed to be a holder in due course, but that if in an Action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill was effected with fraud, duress, or force and fear or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill. In *Tatam v. Hasler*,¹⁰¹ Denman, J. explained this provision as follows:¹⁰² “the words of section 30, sub-section 2 if it is admitted or proved mean no more than that some evidence of circumstances in the nature of fraud must be given sufficiently to be left to the jury...when, therefore, some sufficient evidence of fraud has been given...the onus is on the plaintiff to prove that he gave value and that he had no notice of the fraud.”

The Bearer; Transferor by Delivery

According to section 2 of the Act, a bearer is a holder of a bill payable to bearer or on which the last endorsement is in blank. Such a bill may be negotiated by mere delivery without endorsement by the transferor, in which case he is called a transferor by delivery.

A transferor for delivery, under section 58(2), is not liable on the bill he has so transferred or negotiated. This is because generally speaking, a person is liable

¹⁰⁰ (1955) 139 E.R. 1030.

¹⁰¹ (1889) 23 Q.B.D. 345

¹⁰² Ibid, at p.348.

on a bill only if he signs it and since the transferor by delivery did not sign the bill before parting with it, he cannot be made liable on it. However, under section 58(3) of the Act, certain responsibilities are assigned to him. This states that:

A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer, he is not aware of any defect which renders it valueless.

Although the transferor by delivery is not generally liable on the bill he has so transferred or negotiated, section 58(e3) incorporates specific circumstances under which a transferor or a bearer bill, despite the absence of his signature, remains liable on the bill to the transferee, first, he may find himself, liable on his contract if he has transferred the bill for a consideration. Secondly, since he warrants that the bill is what it purports to be, he will be liable to an innocent transferee if the bill is found to be a forgery. Thirdly, he has a similar liability if he has not gotten a right to transfer the bill, for example, if it was lost and he gotten a right to transfer the bill, for example, if it was lost and he found it, or if someone gave it to him for inspection only. Finally, he is responsible for the transferee if he knew that the bill was valueless and he transferred it nevertheless. Thus, if he has taken some consideration for the transfer, this is recoverable from him.

However, it should be pointed out that the transferor by delivery, by virtue of section 58(2), does not thereby warrant that the bill will be honoured when presented. In *Fenn v. Harrison*,¹⁰³ Lord Kenyan, C.J., explained the liability of the transferor by delivery as follows:¹⁰⁴

It is extremely clear that the holder of a bill of exchange send it to market without endorsing his name upon it, neither morality nor the laws of this country will compel him to refund the money, for which he has sold it, if he did not know at the time that it was not a good bill. If he knew the bill to be bad, it would be like sending out a counter into circulation to impose upon the world instead of the current coin. In this case therefore, the defendant has known the bill to be bad, there is no doubt that they would be obliged to refund the money.

Accommodation Party

According to section 28(1) of the Act, accommodation party is a person who has signed a bill as drawer, acceptor or endorser, without receiving value thereof, and for the purpose of lending his or her name to some other party to the bill. An acceptor will ordinarily sign a bill in return for some consideration given by the drawer. As against the drawer, therefore, he is contractually bound to give his

¹⁰³ (1709) 100 E.R. 842.

¹⁰⁴ Ibid, at p.844

acceptance to the bill. In an accommodation bill, on the other hand, he gives his acceptance gratuitously in order to accommodate the drawer.¹⁰⁵ Such an accommodation allows the latter to raise money on the bill, or obtain credit for an agreed period of time. One the understanding with the acceptor, that he himself will pay it when due the bill may then be dealt with like any other bill, enabling the drawer to put it into circulation.

The acceptor of an accommodation bill (the accommodation party) is liable to a holder for value, like in any other case, though he can look up to the drawer for payment. Sub-section (2) of the said section 28 states that this is so whether or not when such holder took the bill he was aware that such party was an accommodation party. Thus the drawer is in effect the principal debtor and the acceptor (the accommodation party) the surety, thereby reversing the normal principle and surety relationship.¹⁰⁶

Right and Duties of a Holder

A holder, whether he is simply a holder, a holder for value, or a holder in due course, he certain well defined rights and responsibilities under the Act. As a holder of a bill he may sue on the bill in his own name. Additionally, if he is a holder in due course, he holds the bill free from (a) any defect in the title of prior parties, as well as (b) mere personal defences available in prior parties among themselves. Any other holder takes the bill subject to equities.¹⁰⁷ Secondly, the holder may:

- a. Enforce payment against any or all the parties liable on the bill;
- b. Negotiate the bill even if the latter obtains a good and complete title; and
- c. Obtain payment, in which case the person who pays him in due course obtains a valid discharge of the bill.¹⁰⁸

In order to entitle the holder to the enjoyment of some of the rights immediately above stated, the Act equally imposes some obligations on him. First, he is obliged under section 40(1) to present the bill for acceptance or to negotiate it within a reasonable time. Under sub-section (2) of this section, if he fails to do so, the drawer and all endorsers are thereby discharged. Under sub-section (3) of the same section, in determining what a reasonable time for this purpose is, regard must be had to the nature of the bill, the usage of trade, and the Acts of the particular case.

¹⁰⁵ This, in *Oriental Financial Corp'n. v. Overend Gurney & Co.* (1871) 7 Ch. App. 142, acceptor received a commission in return for his acceptance and it was held that the bill was not an accommodation bill.

¹⁰⁶ P. et seq. ante.

¹⁰⁷ S. 38(1)(2)(3).

¹⁰⁸ S. 40(1)(2)(3).

Secondly, by virtue of the provisions of section 45 of the Act, the holder of a bill or anyone authorized to receive payment thereof, has the obligation to duly present it for payment. Again, if the bill is not so presented, the drawer and the endorser are thereby discharged. The effect of the failure so to present the bill for acceptance and payment, is that the holder is left with no party against whom he can direct his claim and obtain payment of the bill.

Thirdly, where the bill is dishonoured, whether by non-acceptance or by non-payment, the holder must give notice of the dishonour to the drawer and each endorser. Under the provisions of section 48 of the Act, and subject to the proviso therein contained, any drawer or endorser to whom such notice is not given is discharged. Finally, by virtue of the provisions of section 51, of the Act, when a bill has been dishonoured for whatever reason, the holder has the responsibility of noting it, if it is an inland bill or protesting it if a foreign bill.

Issue\Delivery of Bills

After a bill has been drawn up and signed by the drawer, and usually otherwise complete, the next action or step to be taken is to “issue” it. According to section 2 of the Act, “issues” means “the first delivery” of a bill or note, complete in form to a person who takes it as a holder. By the nature or sequence of events, the first delivery of a bill is to the first holder, that is, the payee, or the first bearer thereof. Obviously, if the bill is payable to the bearer himself, there would be no question of delivery to another person. The drawer becomes the holder until the bill is duly and properly “negotiated”.

Delivery, according to the same section 2, means “transfer of possession, actual or constructive, from one person to another”. Section 21 provides in clear terms the relationship which delivery bears to a bill. Sub-section (1) states in part that “every contract on a bill...is incomplete and revocable, until delivery of the instrument in order to give effect thereto”. It is pertinent, therefore to point out here that the purpose of delivery is essentially to give effect to the contract as between immediate parties, delivery in order to be effectual must be made either by or under the authority of the party drawing, accepting, or endorsing, as the case may be.

The next event or action that may take place after the issue of the bill depends primarily on the nature of the instrument itself. If it is a demand bill, that is payable on demand, the most likely event or action is for the payee or holder to present it to the drawee for payment. Otherwise, it may either remain in the hands of the payee or holder until it is finally paid or alternatively be negotiated once or several times in succession. If the bill is an order bill, it may be presented for acceptance and or payment, as the case may be, or be negotiated either before or after acceptance.

Some bills are required to be accepted before payment can be duly demanded. In such a case, when the time for payment falls due, the bill, having been accepted, will normally be presented to the acceptor for payment. If either acceptance or payment is refused, the bill may be treated as dishonoured, in which case, the holder, after taking the requisite preliminary steps, may proceed in an action against the person or persons liable on the bill. The proceedings may be based on the non-acceptance or non-payment of the bill, as the case may be. If acceptance is obtained and payment effected, the bill thereby becomes duly discharged and no further examined in some detail in the remaining parts of this chapter.

Signature on Bills

As already mentioned in the last chapter, the term “signature” is not defined by the act but in practice, it has been employed to include not only writing the name of the person signing but also his initials, thumb impression or approved mark. Thus in *Morton v. Copeland*,¹⁰⁹ Moule, J. observed that “the signature does not necessarily mean writing a person’s Christian name and surname, but any mark which identifies it as the act of the party.”¹¹⁰ It may be recalled also that by virtue of section 93(1) of the Act, signature may be written on the bill or note by or under his signing either by himself or by some other person by or under his authority. In sub-section (2) it is provided that in the case of corporations, it is sufficient that the instrument or writing is sealed with the corporate seal.

It may also be recalled that under section 23 of the Act, no person can be liable on a bill, as drawer, acceptor or endorser unless he has signed it. Therefore, the signature of a party on the bill or note is statutorily essential for attaching liability on him. Although he may sign as drawer, acceptor or endorser, to be liable as such, he may be virtue of the said section 23, also in a trade or assumed name. In this latter situation, it is provided there that the person so signing it deemed to have signed in his own true name. It is further provided that the signature or the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. By implication, this means that the person so signing is deemed to have signed as agent or representative of all the partners in the firm.

Signature by Agent

It may again be recalled that by virtue of section 93(1) of the Act, a person may sign a bill either by himself or by some other person by or under his authority. By virtue of section 26(1), a person who signs a bill as an agent or in a representative

¹⁰⁹ [1885] 199 E.R. 861

¹¹⁰ *Ibid.*, at p.869

capacity may be personally liable unless he adds to his signature words indicating that he signs for or on behalf of his principal or in such capacity. He may do so by prefixing that word for, on behalf of, on account of, procuration (per pro) or such like words to the principal's name. In determining whether such signature is that of the principal or that of the agent who signed, sub-section (2) of section 26 requires that the construction most favourable to the validity of the bill should be adopted.

Under section 93(2) of the act, it is provided that for a limited liability company to become liable as a party to a bill or note, it is significant if the bill is sealed with its corporate seal. This however is not to be construed as requiring all bills or notes by limited liability companies to be under seal. Section 73 of the CAMA provides further how a limited liability company can become a party and be bound by a bill or note. It states as follows:

1. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, or expressed to be made, accepted or endorsed on behalf or on account of the company by a person acting under its authority;
2. The company and its successors shall be bound thereby if the company is in accordance with sections 65 to 67 of this Act,¹¹¹ liable for the acts of those who made, accepted, or endorsed it in its name, or on its behalf, or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purpose of section 25 of the Bills of Exchange Act.

In *Daarhouwer & Ltd. v. Christian & co. Ltd. & Anor*¹¹² a company director signed a bill on behalf of his company as acceptor without adding any words to indicate that he was acting for and on behalf of the company. It was held that that was not a sufficient acceptance to bind the company under section 81 of the Companies Act of 1968 and section 26(1) of the Bill of Exchange Act 1958 and that the director was personally liable even if the company's seal was affixed to the bill. In *Metalimpex v. A.G. Leventis Ltd.*¹¹³ it was however held that in deciding whether to hold the company liable in such cases, the court may look at the circumstances in which the instrument was signed, including any communication which passed between the parties on the subject. If the court finds that the person who had signed had the bound company's authority to sign and that the company

¹¹¹ Ss. 65-67 of CAMA deal with the Liability for acts of a company

¹¹² [1967] N.C.L.R. 434

¹¹³ K.B,301.5.[1974] N.C.L.R. 511.

intended to be bound, the company and not the director signing will be liable on the instrument.¹¹⁴

A signature may be by procuration (per pro) that is, in accordance with limited authority given. An example is where a person signs a cheque and authorizes another to “collect only”. When the latter collects the proceeds of the cheque at the bank, his signature is said to be per pro. Section 25 of the Act expressly provides that “a signature by procuration operates as notice that the agent has by a limited authority to sign”. In such a situation, it is provided that the principal is bound only if agent is appending his signature did so within the actual limit of his authority. In *Midland Bank v. Reckitt*,¹¹⁵ Lord Atkinson stated that this notice operated when the document is negotiated or delivered, the significance of the section being merely to put the person receiving such instrument on enquiry as to the extent of the agent’s authority.¹¹⁶

Forged and Unauthorized Signatures

Although the Act distinguishes between “forged” and “unauthorized” signature, it does not define or explain the term “forgery”. Under section 465 of the Criminal Code,¹¹⁷ “forgery” is defined as follows:

A person who makes a false document or writing knowing it to be false, and with intent that it may in any way be used or acted upon as genuine...or with intent that any person may in the belief that it is genuine...be induced to do or refrain from doing an act...is said to forge the document or writing.

Section 24 of the Act provides that a forged or unauthorized signature on a bill is wholly inoperative and not right to retain the bill, or give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired by the virtue of or under the signature unless the party against whom it is sought to retain,, or enforce payment of the bill is precluded from setting up the forgery or want of authority. It is further provided however, that nothing in the section shall affect the ratification of an unauthorized signature not amounting to forgery. These provisions are limited by the provisions of other sections of the Act, namely:

- a. Section 54(b)(i) whereby the acceptor of a bill is precluded from denying to a holder in due course the genuineness of the drawer’s signature;
- b. Section 55(b)(ii) whereby an endorser is precluded from denying to a holder in due course the genuineness and regularity of the drawer’s signature;

¹¹⁴ See now, s.66 of CAMA

¹¹⁵ [1933] A.C. 1.

¹¹⁶ Ibid., at p.

¹¹⁷ Cap. 32; see also ss. 363-363 Penal Code Law (Cap. 89) Laws of Northern Nigeria (1963).

- c. Section 60 whereby some protection is given to a banker who pays a demand draft on which the endorsement has been forged;
- d. Section 77 whereby some protection is given to a collecting banker in respect of forged signatures on cheques; and
- e. Section 82 whereby some protection is given to the banker and drawer in respect of crossed cheques.

The principle relating to estoppel as embodied in section 24 of the Act can be seen in some detail by examining some leading cases on the payment of cheques by bankers. In *London and River Plate Bank v. Bank of Liverpool*,¹¹⁸ Matthew, J., explaining the operation of the equivalent English enactment said that, “if the plaintiff...so conducted himself so as to lead the holder of the bill to believe that he considered the signature genuine, he could not afterwards withdraw from that position”. In this regard, in *Greenwood v. Martins Bank*,¹¹⁹ husband was estopped from denying that his signature has been forged by his wife where he had repeatedly condoned prior forgeries by the wife. It is however, pertinent to add here that for estoppel to operate against the party signing, his signature must possess the *animus operandi*. Thus, under the impression that he was signing a different instrument, his signature was held void and inoperative.¹²⁰ It is pertinent also to point out that although in general law forgery cannot be ratified and given effect, since the forger could have or purported to have acted for and on behalf of the person whose signature he had forged, it can be otherwise under the section.

Meaning and Significance of Negotiation of Bills

According to section 3(1) of the Act, a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. Under sub-section (2), a bearer bills negotiated by mere delivery while that of an order bill is accomplished by the endorsement of the holder completely by delivery thereof. It follows therefore that negotiation is essentially an Act by which an instrument is put into circulation, or the circulation continued, by being passed from one party to another. It is pertinent here to recall the discussion we had above on the distinction between negotiation and assignment of an instrument.

The effect of negotiation is to make the transferee both the possessor and owner of the bill and to pass on to him all the attendant rights and liabilities of a holder. Deliver is defined under section 2 of the Act as meaning a transfer of possession, actual or constructive, from one person to another. It is possible to obtain the transfer of a bill unaccompanied with the transfer of the property

¹¹⁸ [1896] 1 Q.B. 7, at p. 10

¹¹⁹ [1933] A.C. 51

¹²⁰ See *Forsterv. Mackinon* [1869] L.R. 4 C.P. 704

therein. Examples are where a person transfer a bill to another for safe keeping only, or where it is transferred to any agent for collection only. Accordingly, it is submitted that a bill is effectively negotiated when there is delivery with the intention to transfer the property in the bill to the transferee as well. This conclusion is supported by the provision of section 21(3) of the Act which states that when a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

In *Walters v. Neary*,¹²¹ it is held that a transferee of a bill is entitled as of right to have the bill endorsed by the transferor. However, until this is done, the transferee is merely in possession of assignee with no better title than the transferor (assignor). Thus section 31(4) of the Act provides that where the holder of a bill payable to order transfers it for value without endorsing it the bill and the transferee in addition acquires the right to have the endorsement of the transferor. Any subsequent endorsement by the transferor will then operate as a negotiation, which takes effect only from the date of such subsequent endorsement.

A bill can legally and effectively only be negotiated by the holder thereof or any other person under an obligation to be valid and operate as a negotiation must comply with certain conditions therein stipulated. These include:¹²²

- a. It must be written on the bill itself and signed by the endorser, though a simple signature is sufficient;
- b. It must be an endorsement of the entire bill and a partial endorsement does not operate as an endorsement of the bill;
- c. Where a bill is payable to the order of two or more payees or endorsees, who are not partners, they must all endorse it unless the one endorsing has the authority to do so for the others;
- d. Where in an order bill the payee or endorsee is wrongly designated, or his name is mis-spelt, he may endorse the bill as therein described, adding, if he thinks fit, his proper signature;
- e. Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved;
- f. An endorsement may be conditional, or special, or be made in blank and may contain terms making it restrictive.

¹²¹ [1904] 21 T.L.R. 146.

¹²² See s. 32.

Conditional Endorsement

Under section 33 of the Act, it is provided that where a bill is endorsed conditionally, the condition may be disregarded by the payer and payment to the endorsee is valid whether the condition has been fulfilled or not. This provision appears to conflict with that of section 19 whereby the drawer may give a qualified or conditional acceptance. Commenting on this provision, Chalmers¹²³ had expressed the opinion that as between the endorser and the endorsee received payment without the condition being fulfilled, he would hold the proceeds in trust for the endorser.

If conditional endorsement is permitted, it would appear to contradict the basic or essential characteristics of unconditionality of the order constituting the bill as stipulated under section 3 of the Act. Again, an endorsement subject to a condition would apparently render the instrument no longer negotiable, at any rate, until the condition is fulfilled. Thus while it remains not negotiable as such, the effect would presumably be to negate another essential characteristic of a bill, namely its negotiability. Consequently, by this provision, a condition endorsement may be treated as if the condition does not exist. Thus the obligation on the bill is preserved but, on the other hand, if the condition is accepted, the bill is rendered no longer negotiable.

Endorsement in Blank

An endorsement in blank entails the writing of the signature of the endorser only and without specifying the endorsee. However, his signature alone is sufficient to indicate that he is desirous of having his rights transferred to someone else. In consequence therefore, if the endorser delivers the bill to another person, the latter thereby acquires the right to receive payment thereof. Mere delivery of the bill from the endorser to another person, after it has been so endorsed, constitutes an effective negotiable of the bill.

Section 34(1) of the Act states that an endorser in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer. Subsection (4) of the same section empowers the holder of a bill endorsed in blank, if he so wishes, to convert the blank endorsement into a special endorsement. He can do this by simply writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. Since the holder himself has not signed the bill, the effect of the conversion is that he does not incur any direct personal liability on it as an endorser otherwise would.

¹²³ Chalmers's, *op. cit.*, at pp. 39-40

In *Vincent v. Horlock*,¹²⁴ Lord Ellenborough had occasion to observe on the effect and significance of endorsement in blank. There he stated, *inter alia*, as follows:¹²⁵

“When a bill endorsed in...blank, a power is given to the endorse of specially appointing the payment to be made to a particular individual and what he does in the exercise of this power is only expression *eorum qua facite insut*. Since such a document becomes payable to bearer, it can be transferred by a fraudulent person to give a good life to an innocent person who has given value. This can be done without a forgery, since no signature is necessary.”

Special Endorsement

Under section 34(2) of the Act, a special endorsement, in addition to the signature of the endorser. Specifies the person to whom or to whose order the bill is to be payable. Thus a special endorsement can be effected in one of two ways, namely, either originally endorsing the bill with the name of the appointee and signing it or by the conversion of an endorsement in blank as stated above. After such an endorsement and delivery of the bill to the person so specified, the latter becomes entitled to receive payment thereof and may, if he desires, transfer it by making a further endorsement thereby further negotiating it.

By virtue of subsection (3) of the same section, the provisions of the Act under section 7 relating to a payee apply with necessary modifications in respect of special endorsement. For example, the endorser must specify the name of the person to whom or to whose order he wishes the bill to be paid or otherwise indicate so on the bill with reasonable certainty.

Restrictive Endorsement

This may be accomplished by (a) prohibiting any further negotiation of the bill or (b) providing expressly that an endorsement is mere authority to deal with the bill as thereby directed and not transfer the ownership thereof.¹²⁶ Examples are endorsing a bill with direction to the payer to “pay X only” or “pay X for the account of Y” or “pay X or order for collection only”.¹²⁷

A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued. It does not however empower him to further transfer his rights as endorsee to another person unless he is expressly authorizes to do so on the bill. Where he is so authorised, all

¹²⁴ [1808] 170 E.R. 1015

¹²⁵ *Ibid.*

¹²⁶ See s. 35(1)

¹²⁷ See *Archerv. Bank of England* [1781] 99 E.R. 404

subsequent endorsees take the bill with same rights and subject to the same liability as the first endorser under the restrictive endorsement.¹²⁸

A restrictive endorsement is most commonly used where a banker or an agent has to endorse a bill to an agent banker for collection and indicates in the endorsement “for collection”. In such a situation, he cannot be sued on the bill, as any other endorser can be, if it is dishonoured. An endorser may also eliminate the responsibility he would otherwise have had by adding to his endorsement such restrictive phrases as “without recourse” or “san recourse”. An endorser making such an endorsement cannot be made liable on the bill as ordinarily he would have been. An agent, by virtue of section 31(5), may also negate any personal liability on the bill by stating clearly in his endorsement that he does do so in a representative capacity.

Negotiation of an Overdue Bill

A bill payable on demand is deemed to be overdue within the meaning and for the purpose of the Act when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable time for this purpose is a question of fact. In practice however, a bill is said to be overdue if the date of payment has passed and it is still in circulation. Every negotiation of a bill is *prima facie* deemed to have been affected before the bill was overdue, except where on endorsement bears a date after the maturity of the bill.¹²⁹

According to section 36(2) of the Act, an overdue bill can only be negotiated subject to any defect of title affecting it at its maturity. Henceforward, no person who takes it can acquire or give a better title to the bill than that which the person from whom he took it had. It follows therefore that a holder of an overdue bill takes it subject to equity and cannot become a holder in due course of it. If an overdue bill is accepted or further endorsed or negotiated, the bill, by virtue of section 10(2) is converted into a bill payable on demand, as regards the acceptor or any subsequent endorser.

Negotiation to a Prior Party

A prior party to a bill is any party already liable on the bill such as the drawer, a prior endorser, or the acceptor. Under section 37 of the Act, where a bill during its circulation is negotiated back to such a party, he may, subject to the provisions of the Act re-issue and further negotiate the bill. Specifically, the relevant provisions referred to here are sections 59 to 69 which deal with discharge of bills.

However, the said section 37 provides further that in doing so, the prior party will not be entitled to enforce payment of the bill against any intervening

¹²⁸ S. 35(2) & (3).

¹²⁹ S. 36(3) & (4)

party to whom he was previously liable. The significance or essence of this provision is that the two liabilities cancel themselves out and the two parties are discharged therefore as regards each other.

Acceptance of Bills

Meaning, Validity and Time of Acceptance

The term acceptance is explained by section 2 of the Act as meaning an acceptance completed by delivery or notification. This means that for any acceptance to be valid, effective and binding on the acceptor. He must either physically deliver the accepted bill to the holder who presented it to him for acceptance, in which case the latter would be enabled to perceive the fact of acceptance to such holder. It is pertinent to point out that since the order of the drawer is in writing, any communication of acceptance must also be in writing to be valid, effective and binding. The term is further defined under section 17(1) as the signification by the drawee of his assent to the order of the drawer. In essence, acceptance is the acknowledgement by the drawee of his indebtedness to the drawer and as already mentioned, until he does so he is not liable on the bill. If he declines acceptance he may well become guilty of breach of contract in respect of which the bill was given. He thereby becomes liable to be sued on the contract but no action can validly be brought against him on the bill itself.

Under section 17(2) of the Act, an acceptance is valid and binding only if it complies with the condition laid down therein. According to this, an acceptance must, *inter alia*, be written on the bill itself and signed by the drawer. Mere signature without the addition of any words is however sufficient. It is pertinent here to recall the meaning of signature is expatiated earlier in this chapter. Secondly, the acceptance must not promise performance by the drawee by means other than the payment of money. This condition is complimentary to the provision under section 3(2) that an instrument which orders the doing of an act in addition to the payment of money is not a bill of exchange. It is usual in practice to write the acceptance transversely across the face of the bill. However, this does not mean that an acceptance written in any other form or part of the bill is invalid. All that is required is that it appears on the face of the bill and complies with the conditions mentioned in the preceding paragraph.

Technically, a bill may be accepted at any time and the Act summarizes this to mean:¹³⁰

Before the bill has been signed by the drawer;
While the bill is otherwise incomplete;
When the bill is overdue;

¹³⁰ S. 18(1)

After the bill has been dishonoured by previous refusal to accept; or
After the bill has been dishonoured by non-payment.

It is further provided that when a bill after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any contract agreement, is entitled to have the bill accepted as of the date of first presentation to the drawee for acceptance.¹³¹

Classification of Acceptance

The Act classified acceptance into two, *general and qualified*. A general acceptance is said to seek assent to the order of the drawee without qualification while a qualified acceptance essentially seeks to vary the terms of the order. In particular, it is provided that the order is qualified if:¹³²

Payment by the acceptor is made dependent on the fulfilment of a condition therein stated (conditional acceptance);

The acceptor undertakes to pay only at a part of the amount for which the bill is drawn (partial acceptance);

The acceptor undertakes to pay only at a particular place specified and not elsewhere (local acceptance);

The acceptor specifies the particular time at which he undertakes to pay (qualification as to time);

a. Where there are more than one drawee, and the acceptance is by one or more of them, but not by all of them (qualification as to the drawees).

These provisions require some more detailed explanation for better understanding of their import and significance. First, the word “conditional” under (a) appears to be very wide, while the term “local” under (c) does not mean accepted and payable at a particular place but at a particular place ONLY. A qualified acceptance under (d) is tantamount to a variation of the due date. While an acceptance only of the drawees under (e) means that the other drawees have no liability. The only difficulty arises under (b) where there is partial acceptance in terms of part of the amount. It is not clear from this provision whether an acceptor for a lesser sum or amount becomes only liable for such sum thereby. The logical inference, *prima facie*, would seem to be that he would be bound by the tenure of his acceptance. That is for the lesser sum or amount. However, the second paragraph of section 44(2) implies that the taking of an acceptance qualified as to the amount does not discharge the drawer or endorser if such parties had not assented to the taking of the lesser amount. The consequence of taking such qualified acceptance without the express or implied assent of the other

¹³¹ S. 18(2)

¹³² S. 19

parties liable on the bill is that they stand discharged of their liabilities as indicated in the first paragraph of the section. It is pertinent to point out here also that the holder of the bill by virtue of the provision of sub-section (1), on his part, is not bound to take the qualified acceptance. He may refuse same it is not bound to take the qualified acceptance. He may refuse same it is further provided there that if he does not obtain an unqualified acceptance, he may treat the bill as dishonoured for non-acceptance.

Presentment for Acceptance

Although legally speaking, not all bills require acceptance, in commercial practices most of them are presented for acceptance before they become due for payment. This done essentially in order to obtain the liability of the additional persons on the bill. The Act in general sense indicates when acceptance or excused and when or how this should be validly effected.

The Act indicates the occasions when acceptance is necessary, which are summarized as follows:¹³³

- a. Where the bill is payable after sight, in order to fix its maturity;
- b. Where the bill expressly stipulates that it should be presented for acceptance; and
- c. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In other cases presentment for acceptance in order to render liable any party to the bill is not necessary. But the Act identifies with certain difficulties that can arise when a bill is drawn or when a bill requiring acceptance comes into the hands of a holder just before the due date for payment. In such circumstances, it provides that presentment for acceptance before presentment for payment is excused though this does not discharge the drawer or any endorser, if with the exercise of reasonable diligence the holder had no time to present it for acceptance.¹³⁴

Where a bill requires acceptance is transferred, the transferee must present it for acceptance, otherwise all the parties liable on the bill could stand discharged. The penalty for non-presentment is severe and sometimes has seemingly unfair consequences. Section 40 provides in this respect that:

1. Subject to the provision of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time;
2. If he does not do so, the drawer and all endorsers prior to that holder are discharged; and

¹³³ S. 39(1) & (2).

¹³⁴ Ibid, (3) & (4)

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

The act specifies that rules with regard to presentment for acceptance, sometimes being obligatory while others are optional in application. Where they are obligatory, failure to present in accordance with those rules incurs liability in that the parties previously liable are released thereby. It states that a bill is duly presented for acceptance if it complies or is made in accordance with the following rules:¹³⁵

- a. The presentment must be made by or on behalf of the holder and to the drawer or some other person authorised to accept or refuse acceptance on his behalf. This must be made at a reasonable hour, on a business day and before the bill is overdue.
- b. Where the bill is addressed to two or more drawees, who are not partners, presentment must be made to all of them. However, if one has authority to accept for the others, then presentment may be made to him only.
- c. Where the drawee is dead, presentment may be made to his personal representative.
- d. Where the drawee is bankrupt or insolvent, presentment may be made to his trustee in bankruptcy or to the official assignee.
- e. Presentment through the post office is sufficient where this is authorised by an agreement or usage.

The obligatory rules embodied in (a) and (b) stem from the need to find the drawee or someone whom the drawee has held out as having authority to act for him. In the case of a partnership the authority of a partner to answer for the others is provided by the partnership law. With other joint drawees, the one accepting must have the actual or ostensible authority to bind the other or others. When the rules allow an option as in (c) and (d), there is practical advantage in presenting it if only to call attention of the persons concerned to the existence of the bill. Both the death or bankruptcy of the drawee enables the holder to treat the bill as dishonoured. But while in the case of death there may be a personal representative, an executor named in a will or an administrator who has taken out a grant, in the case of bankruptcy, there may be a trustee or an official assignee. Each of these is capable of taking on the responsibility of acceptance and can validly do so. In rule (e) the general contractual principle that presentment may be through the post office is not presumed but qualified. The qualification is that

¹³⁵ S. 41(1)

the bill in question is not yet overdue and that he required particulars are given in the advice.

The act proceeds to state the circumstances when presentment in accordance with the rules earlier stated is excused and the bill may be treated as dishonoured by non-acceptance. These are:¹³⁶

- a. Where the drawee is dead, bankrupt or insolvent, or is fictitious, or a person not having the capacity to contract by bill;
- b. Where, though the presentment has been irregular, acceptance has been refused on some other ground; and
- c. Where after the exercise of reasonable diligence, such presentment cannot be effected.

Finally, it draws our attention to the fact that even if the holder has reasonable belief that the bill, on presentment, will be dishonoured, that alone will not excuse presentment.¹³⁷

Acceptance for Honour

Where a bill has been protested for dishonour by non-acceptance, or for better security, and while it is still no overdue, any person who is not already liable on the bill may with the consent of the holder intervene and accept it for honour *supra* protest. This may be done for the honour of the drawer, or any other party liable on the bill, or the person for whose account the bill is drawn. A bill may be accepted for honour *supra* protest for part only of the sum for which it is drawn.¹³⁸ The essence of such acceptance is to preserve the honour and integrity of the person for whom it was made and of the bill itself. By so doing, the bill is once again kept alive and subsisting while the holder or a subsequent holder may thereby regain or attain the status of a holder in due course.

An acceptance for honour *supra* protest in order to be valid and effective must, (a) be written on the bill, while indicating that it is an acceptance for honour; (b) be signed by the acceptor for honour; and (c) expressly state for whose honour it is made. Where it is not so stated, it will be deemed to be an acceptance for the honour of the drawer. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance and not from the date of acceptance for honour.¹³⁹ It is pertinent to point out here that the holder of the bill may refuse to allow the bill to be accepted for honour, if he wished to exercise his immediate right of recourse against prior parties under section 43(2) of the Act.

¹³⁶ S. 41(2)

¹³⁷ S.31(3)

¹³⁸ S. 65(1) & (2)

¹³⁹ *Ibid.*, (3) & (4)

The acceptor for honour by his acceptance, renders himself liable to the holder and every other party to the bill subsequently to the party for whose honour he has accepted the bill. By so accepting, he engages that he will, on due presentation, pay the bill according to the tenure of his acceptance, if it is not paid by the drawee, provided that it has been duly presented for payment and protested for non-payment and that he received notice of these facts.¹⁴⁰ In *Williams v. Germaine*,¹⁴¹ it was held that acceptance for honour is conditional only since the liability of the acceptor does not arise until presentment for payment has been made to the party for whose honour the bill was accepted. Lord Tenterden, C.J. (England) expatiating stated as follows:¹⁴²

“It is equivalent to saying to the holder of the bill: keep this bill, don’t return it, and when the time arrives when it ought to be paid, if it be not paid by the party on whom it was originally drawn, come to me and you shall have the money.”

Payment of Bills

The holder of a bill at its due date, that is maturity, becomes entitled to payment of the sum or amount for which the bill is drawn. However, payment may be made prior to, contemporaneous with, or post such date or maturity. Payment by the acceptor prior to maturity does not discharge the bill but rather operates as a purchase or discounting of it. However, if after such payment the acceptor retains the bill until maturity, it automatically becomes discharged. But if he does not so hold it, he may re-issue it and further negotiate it by putting it back into circulation. As Pollock, C.B. has pointed out in *Attenborough v. Mackenzie*,¹⁴³ “The acceptor, after its issue, stands with regard to a re-transfer of it to him in the same position as any other person. He may indeed pay it to discharge it but discounting it is not paying it; and if he discounts it, he may re-issue it.”

According to article 37 of the Act, if the acceptor re-issues and further negotiates a bill, he will no longer be entitled to enforce payment of it against any intervening party to whom he previously liable. On the other hand, if the acceptor refuses or neglects to pay on presentment, the bill is thereby dishonoured for non-payment and the drawee and all endorsers become severally liable to the holder for the sum for which the bill is drawn.

¹⁴⁰ S. 66(1) & (2).

¹⁴¹ [1827] 108 E.R. 797

¹⁴² Ibid, at p. 801

¹⁴³ [1856] 125 L.J. Exq. 244, at p.245

Where the acceptor or the drawee or someone else on their behalf pays in due course. The bill is discharged and so are all the parties hitherto liable thereon. Where the bill is an accommodation bill and payment is made in due course by the party accommodation bill and payment is made in due course by the party accommodated, the result is the same. The term “payment in due course” is defined under the Act as “payment made at or a third party is paid by the drawer, the drawee may enforce payment thereof against the acceptor, but may not re-issue the bill. Secondly, where a bill is paid by an endorser, or where a bill payable to the order of the drawer is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and any subsequent endorsement, and re-negotiate the bill.”¹⁴⁴

Time of Payment

As pointed out in chapter seven above, an instrument in order to qualify as a bill must be payable at a fixed or determined future time. Where a bill is payable on demand, it must be presented for payment within a reasonable time of coming into the hands of the holder. Where the bill is not payable on demand, it must generally be so presented within a reasonable time after maturity. In determining what is a reasonable time, regard shall be had as to the nature of the bill, usage of trade with regard to similar bills and the facts of the particular case.

Where a bill is not payable on demand, section 14 of the Act regulates how the due date for payment should be computed. First, if the bill is payable at future date, three days of grace is required to be added to the due date unless the terms of the bill expressly exclude this. Such exclusion is commonly achieved by the addition of the expressions fixed or without days of grace to the wording of the bill after reference to the time of payment.

Secondly, where a bill is otherwise payable on a Sunday or a Public Holiday or if the last day of grace falls on a Sunday, Christmas Day or Good Friday, the bill is due and payable on the preceding business day. Thirdly, where the last day of grace is a public holiday, other than Christmas Day or Good Friday, or where the last day falls on a Sunday and the second day of grace is a public holiday, the bill is due and payable on the succeeding business day. Fourthly, where the bill is payable on a fixed period after date, or after sight, or after the happening of a specified event, which is bound to happen, the time of payment is calculated by excluding the day from which time begins to run but including the day of payment. Where the bill is payable to a fixed period after sight, the time begins to run from the date of acceptance, if accepted, and from the date of noting or

¹⁴⁴ S. 58

protesting, if dishonoured by non-acceptance or for no-delivery. The term month for the purpose of these calculations means a calendar month.

Section 94(1) of the Act also provides that where, by the Act, the time limit for doing any act or thing is less than three days, in reckoning time non-business days are excluded. Sub-section (2) defines non-business days for the purpose of the Act as Sunday, Good Friday, Christmas Day and a public holiday, every other day being a business day.

Presentment for Payment

A bill in the ordinary course of business must be presented for payment by the holder or his agent to the payer, that is the drawee or acceptor or his agent at the appropriate time and place. Unless presentment is excused or dispensed with as provided under the Act, failure to do so discharges the drawer and all the endorsers from further liability. In *Metalimpex v. A.G. Leventis Ltd.*, *supra*, the Supreme Court held that presentment for payment of a bill of exchange and the giving of notice of dishonour for non-payment to the party liable to be discharged are generally conditions precedent to instituting an action on the bill by the holder.

Presentment for repayment to be valid and effective must be made in accordance with the rules laid down in section 45(2) of the Act. According to these, where a bill is not payable on demand, presentment must be made on the day it falls due, and where the bill is payable on demand, it must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable. In determining what is a reasonable time for this purpose, regard must be had to the nature of the bill, usage of trade with regard to similar bills, and the fact of the particular case.

The rules further for who should make a valid presentment, at what place and to whom it should be made. First, presentment must be made by the holder of the bill or his agent authorised to receive payment on his behalf and to the person designated by the bill as the payer or a person authorised to act for him in that regard if with reasonable diligence such as person can be found. Secondly, presentment must be at the proper place, which is defined as

- a. The place specified in the bill, if any, or
- b. If no such place is specified, the address of the drawee or acceptor, if this is given in the bill, or
- c. If no address is given, the drawee's or acceptor's known place of business or his ordinary place of residence, if known, or

- d. Where the drawee or acceptor can be found, or his last known place of business or residence.

Thirdly, presentment must be to the drawer or acceptor or his agent authorised to pay. Where the bill is so presented and after the exercise of reasonable diligence, no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required. Where the bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. Where the drawee or acceptor of the bill is dead, and no place of payment is specified, presentment must be made to his personal representative, if there is one and if with the exercise of reasonable diligence has not be found. Finally, presentment through the post office is sufficient only where this is authorised by agreement or usage of trade, or at the option of the person presenting provided that the requisite and particulars and conditions as stipulated in sub-section (3) of the section are furnished or satisfied, as the case may be.

Under section 46 of the Act, delay or non-presentment for payment may be excused or dispensed with under certain circumstances. First, delay in making presentment is excused when such delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. However, when the cause of delay ceases to operate, presentment must be made with reasonable diligence. Secondly, presentment for payment is dispensed within the following circumstances, namely:

- a. Where after the exercise of reasonable diligence, presentment as specified above cannot be effected;
- b. Where the drawee is a fictitious person;
- c. As regards the drawer, where the drawee or acceptor is not found and the drawee has no reason to believe that the bill would be paid if presented;
- d. As regards an endorser, where the bill was accepted or made for the accommodation of the endorser, and he has no reason to expect that the bill would be paid if presented; and
- e. By waiver of presentment, express or implied.

Payment for Honour

Where a dishonoured bill has been accepted for honour, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or refer in case of need. The bill must be presented to the acceptor for honour for payment not later than the day following its maturity where the address of the acceptor for honour is in the same place as where the bill was first protested for non-payment. Where the address of the acceptor is in some other place other than where it was protested for non-

payment, the bill must be forwarded not later than the day following its maturity for presentment to him.¹⁴⁵ Delay in presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment. When a bill accepted for honour is subsequently dishonoured by the acceptor for honour, it must also equally be protested for non-payment by him.¹⁴⁶

Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill is given preference. Payment for honour in order to operate as such and not a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension to it. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays. Where bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. The payer for honour on paying the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder does not demand deliver them up, he is liable to the payer for honour in damage. Finally, where the holder of the bill refuses or declines to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.¹⁴⁷ In *Ex. Parte Swan*,¹⁴⁸ it was held that a payer for honour succeeds to the title of the party from whom, but not for whom, he receives the bill, and is endowed with all the title of that party to sue on it, except that he discharges all the parties subsequent to the person for whose honour he takes it up and that he cannot himself endorse it over to another person.

Dishonour of Bills

We have so far identified and examined the important events that can take place from the time a bill is drawn up until it is paid. In particular, we have discussed the rights and liabilities of the parties to a bill or those connected with it in one capacity or another. One event that can give rise to such a right or liability is the dishonour of the bill by the party liable to accept or pay the bill in due course. Thus dishonour of a bill is of two kinds, namely, dishonour for non-acceptance and dishonour for non-payment, irrespective of the type of acceptance or

¹⁴⁵ See the rules for presentment of a bill, *supra*

¹⁴⁶ S.67; for the meaning of "reference in Case of Need", see s. 15 (1)

¹⁴⁷ S.68

¹⁴⁸ [1868] L.R. Exq. 344

payment. There is need to examine each kind in some detail for the proper understanding and appreciation of their significance and consequences.

Dishonour by Non-Acceptance

According to section 42 of the Act, when a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and endorsers. Thus acceptance is mandatory provided, of course, that there is a valid presentment, unless this is excused or can be dispensed with in accordance with the provisions of the Act. Under section 43 it is further provided that a bill is dishonoured for non-acceptance when it is duly presented for acceptance and such acceptance as is prescribed by the Act is refused or cannot be obtained or where an advice is sent through the post office in pursuance of section 41 and such acceptance is not obtained within ten days from the time the advice was posted, or when presentment for acceptance is excused as prescribed under the Act and the bill is not accepted.

The holder of a bill is not obliged to take a qualified acceptance and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance. Where a qualified acceptance is taken without the holder obtaining the express or implied authorization of the drawer or an endorser, such drawer or endorser whose authority was not obtained before the taking of the qualified acceptance or who did not subsequently assent thereto will be discharged of his liability on the bill. However, this would not operate where a partial acceptance has been taken with due notice given or where a foreign bill has been accepted as to part with protest as to the balance. Where the drawer or endorser of the bill has received notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he is deemed to have assented thereto.¹⁴⁹

The consequences of dishonour by non-acceptance as provided under the said section 43 is that an immediate right of recourse against the drawer or endorser accrues to the holder without the necessity for presentment for payment. It is pertinent here to distinguish this right from that right of action on the bill which may also accrue therefrom. The right of action unlike that of recourse is not immediate in that there are conditions precedent that must be fulfilled before it can be formerly exercised. Such conditions include the giving of the requisite notice of dishonour and noting or protesting the dishonour, as the case may be. A bill payable at sight which has been dishonoured for non-acceptance may however

¹⁴⁹ S.44

subsequently be accepted by the drawee. In such a case, the holder in the absence of any different agreement is entitled, at his option, to allow the bill to be accepted as of the date of first presentment to the drawee or have recourse for his remedies.¹⁵⁰

Dishonour by Non-Payment

A bill is dishonoured when it is duly presented for payment in accordance with the provisions of the Act but payment is refused or cannot be obtained, or where an advise for payment is sent through the post office pursuant to section 45(3) and payment is not obtained, in the case of an order bill before the bill is overdue and in the case of a bill payable on demand within ten days from the time the advice was posted, or presentment for payment is excused as prescribed under the Act and the bill is overdue and unpaid.¹⁵¹ When a bill is dishonoured by non-payment, as in the case with dishonour by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder.¹⁵²

In the event of dishonour, whether for non-acceptance or for non-payment, the holder can only maintain his claim against prior parties after he has performed a number of conditionalities. These include the giving of notice of dishonour of the bill to the required parties and noting or protesting it as the case may be. If he neglects or fails to take the required steps, he would not succeed in any action against any such prior party. The basic rationale for such severe penalty is the commercial desirability of any person liable on a bill being given the earliest possible intimation of a claim against him. If the due date passes without his obtaining such intimation, he is able to presume that his contingent risk or liability in respect thereof has disappeared in the absence of any circumstances that would upset the normal course of event.

Section 57 of the Act provides for the recovery of liquidated damages against parties liable on a dishonoured bill. According to the section, the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer or from a prior endorser. The amount of damages recoverable include the amount of the bill itself, the interest thereon, as therein specified, from the time of presentment for payment if the bill is payable on demand and from the maturity of the bill in other cases and the expenses of noting or when protest is necessary, and the protest has been extended, the expenses of protest. It is further provided that in the case of a bill which has been dishonoured abroad, the parties in lieu of

¹⁵⁰ S.18(2)

¹⁵¹ S.47(1)

¹⁵² S. 47(2)

the foregoing may recover the amount of the re-exchange with interest thereon, as therein specified, until the time of payment.

Notice of Dishonour

Section 48 of the Act provides that subject to the provisions of the Act, when a bill has been dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer and each endorser. Notice of dishonour means the actual notification of the fact that the bill was not accepted when it was presented for acceptance or not paid when it was presented for payment, as the case may be. The notice of dishonour serves to inform the party so notified and to warn him that he himself against his own prior parties. In *A.C.B. v. Yesufu*,¹⁵³ the Supreme Court held that it is trite law that if a banker undertakes the collection of a bill for a customer, he is bound to present them for acceptance and payment in accordance with the provisions of the Bills of Exchange Act and must give Notice of dishonour to the customer if they are dishonoured. The duty to give such notice, it was further held, is a statutory duty founded upon the provisions of the Bills of Exchange Act.

Section 48 of the Act not only contains the law governing the giving of notice of dishonour but also provided for the effect of failure to give such notice. It provides that in the case of dishonour, the drawer and the endorser to whom such notice was not given are discharged. It however qualifies this by providing further that when a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission and that when due notice of dishonour by non-payment unless the bill shall in the meantime have been accepted. Where notice is given by or on behalf of the holder, it ensures for the benefits of all subsequent holders and all prior endorsers who have a right of recourse against the party to whom it is given. Where it is given by or on behalf of an endorser entitled to give notice, it ensures for the benefit of the holder and all endorsers subsequent to the party to whom the notice was given.

In order to render a notice of dishonour valid and effectual, section 49 of the Act lays down certain rules that govern the giving of notice. The rules are many and exacting but some important points about them must be noted. The notice must be given by or on behalf of the holder or an endorser, who at the time of giving it, is himself liable on the bill. The notice does not have to be given or on behalf of the holder or an endorser, who at the time of giving it, is himself liable on the bill. The notice does not have to be in any specific written personal communication is sufficient and preferable. This is for the obvious reason that it

¹⁵³ [1979 2 S.C. 93; cited with approval *Bank of Scotland v. Dominion Bank* (Toronto) [1891] A.C. 92

provides both the fact and the evidence of such notice. However, a written notice may be preceded by or supplemented and validated by verbal communication. The return of the dishonour bill itself is usually deemed a sufficient notice its dishonour. The notice does not have to be in or contain any specific terms so long as the bill is identifiable and it is made clear that the bill had been dishonoured by non-acceptance or non-payment, as the case may be. Posting the notice sufficient, and in accordance with the general principle of law and trade usage, it is deemed to have been given once posted. The notice may be given to the person entitled to notice or his authorized agent, or where he is dead to his personal representative and where he is bankrupt or insolvent to his trustee in bankruptcy or official assignee. Where two or more persons who are not partners are entitled to notice, this should be given to each of them unless one of them has authority to receive it for and of behalf of the others. Although notice is required to be given to each and every party liable on the bill, a holder may not trouble himself to give notice to a party he does not wish or expect to re-imburse him. Any party receiving notice of dishonoured, must be given within a reasonable time after the bill is dishonoured, but in the absence of any special circumstance, it must be given on the day of dishonour or on the day following.

As already pointed out, the Act excuses or dispenses with the giving of notice in certain circumstances. Section 50(1) excuses delay giving notice where this caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct or negligence. The Supreme Court, demonstrates this in *Agbonmagbe Bank Ltd. v. C.F.A.O. Ltd.*,¹⁵⁴ where the customer of the respondents were not informed of the dishonour within a reasonable time. The latter, having not received a notice of dishonour, accepted further cheques from the same customer, which were drawn on the same account. It held, *inter alia*, that if the payee of a bill of exchange has been led by the drawee to believe that the bill would be honoured, and it was not, the drawee would be liable for any other loss caused by the payee, and that if the drawee of a bill of exchange does not give notice of dishonour within a reasonable time, it will be reasonable for the payee to assume that the drawee has honoured the bill. However, when the cause of the delay, if any, ceases to operate, it is required that the notice must be given with reasonable diligence. Sub-section (2) of the same section further enumerates the circumstances in which notice is dispensed with including, *inter alia*, when after the exercise of reasonable diligence such notice cannot be given to or does not reach the drawer or endorser sought to be charged, or when it is waved by the person entitled to such notice or his agent. Finally,

¹⁵⁴ [1966] 1 A.L.R. Comm. 238.

section 52 states that it is not necessary to give notice of dishonour to the acceptor of the bill and inferentially the endorser to whom the bill had been presented. The reason is obvious, since he is the party who has declined or neglected to accept or pay as the case may be. This was adopted by the Supreme Court in the case of *Metalimpex v. A.G. Leventis Ltd.*, *supra*, where it stated as follows:¹⁵⁵

It is settled law that where the endorser (in the instance case the respondents) is the person to whom the bill is presented for payment, it is not necessary to serve him (the endorser) with a notice of dishonour for non-payment. See section 50(2)(d)(ii) of Bill of Exchange Act 1917, Cap. 21.

Noting and Protesting of Bills

When a bill has been dishonoured, the giving of notice of dishonour is the first formal step to be taken, followed by noting, if the bill is an inland bill or protesting, if a foreign bill. Although it is not necessary to note an inland bill which has been dishonoured in order to prevent recourse against the drawer or the endorser, if a foreign bill which has been dishonoured is not protested, the drawer and the endorsers are discharged.¹⁵⁶ Both noting and protesting are formal steps providing some convenient methods of authenticating the fact of dishonour of a bill. Noting, which is an incipient protest, consists in recording the evidentiary fact of dishonour taken by a notary public. These acts must take place on the day of dishonour or on the next succeeding business day thereafter.

Noting is usually accomplished first by the notary public re-presenting the dishonoured bill for acceptance or payment, as the case may be. This is to confirm that dishonour had in fact taken place. If acceptance or payment is still refused or not forthcoming, the notary public then makes a copy of the bill in his register and notes it, that is endorses on the bill itself the date of presentment, the answer given and his charges and finally initials it. A “protest” is a formal declaration by a Notary Public on behalf of the holder of a bill constituting an attestation or evidence of dishonour of the bill. A bill which has been protested for non-acceptance may be subsequently protested for non-payment. Subject to certain provision a bill must be protested at the place of dishonour. The protest must contain a copy of the bill and must be signed by the notary public making it. It must in addition specify the person who requested the protesting, the demand made and the answer given or the fact that the drawee or the acceptor could not be found. Where the bill is lost, destroyed or wrongfully detained protest may be made on a copy or written particulars of the bill.¹⁵⁷ Under section 51(9) of the

¹⁵⁵[1976] N.C.L.R. 20, at p.30

¹⁵⁶S. 55(1) & (2)

¹⁵⁷S.51(3),(6),(7) & (8)

Act, noting may be dispensed with under any circumstance that would cause a notice of dishonour to be dispensed with.

Discharge of Bills

Meaning of Discharge

It is pertinent first to distinguish the discharge of a bill from the discharge of a party to the bill. A bill is properly discharged when all the rights against all the parties to the bill cease to enure and be enforceable. In such a case, no person including the holder in due course can successfully claim the amount of the bill, or any amount thereupon, from any of the parties thereto. The effect is to release all the parties to the bill from further liabilities, primarily or secondary, on their promises. On the other hand, a party to a bill is discharged when his personal obligations and liabilities on the bill cease to enure and be enforceable. Thus a party may be discharged while another still remain liable under the bill. An example is where a secondary party to a bill is discharged while the primary party continues to remain liable. A right of recourse against the latter continues to exist and remain enforceable. Thus where a bill is dishonoured by non-payment or by non-acceptance, and the due notice of dishonour is not given to an endorser, or proper protest made by the holder. The drawer and the endorser may be released from their guarantee liability while the acceptor continues to remain liable. In this situation, the bill is not discharged. The Act makes provision for five principle methods by which a bill may be discharged and these are discussed hereunder.

Discharge by Payment in Due Course

This is the most usual or common and most important of all the statutory methods of discharge of bills. According to section 59(1) of the Act, a bill is discharged by payment in due course by or on behalf of the drawee or the acceptor. Payment in due course is defined as “payment made at or after the maturity of the bill to the holder thereof in good faith without notice that his title to the bill is defective.” First, it follows that such payment to be valid and proper must be made at or after the maturity of the bill. Consequently, any payment made before the maturity of the bill does not discharge it. The bill therefore continues to be negotiable and may be subsequently valid and properly negotiated by further endorsement.

Secondly, for any payment to operate as a valid and proper discharge of a bill, the Act requires again that it must have been made to the holder, inferentially, such payment could be made to the holder’s agent who is properly authorized to receive such payment. We have already discussed the meaning of holder within the meaning of the Act. Payment to a person who has wrongfully obtained possession of the bill may positively or negatively affect the valid and

proper discharge of the instrument. Thus, for example, a person who obtained title through a forged endorsement cannot be a holder and therefore cannot give a good discharge of the bill.¹⁵⁸ But if the bill is a bearer bill and the endorsement had not been forged, mere possession of it is sufficient to constitute the person a holder.¹⁵⁹ In that situation, payment to any person in possession thereof will sometimes constitute a valid and proper discharge of the bill even if he had in fact stolen the bill or had acquired it by an act of omission amounting to fraud provided the payment was made without notice of the theft or fraudulent act or omission.

Thirdly, the Act also requires that for a payment to operate as a valid and proper discharge of a bill, the payment must have been made in good faith and without notice of the fact that the title of the holder or receiver is defective. It may be recalled that according to section 92 of the Act, a thing is deemed to be done in good faith within the meaning of the Act where it was in fact done honestly, whether it was done negligently or not. We have already discussed the meaning and significance of this provision in relation to holder in due course.¹⁶⁰ The same applies here.

Fourthly, the Act further requires that the payment must be made “by or on behalf of the drawee or acceptor.” Thus, if payment was made by or on behalf of an endorser or the drawer, the bill is not validly or properly discharged. Instead, the drawer, if such payment was made by him, has the right against the acceptor to demand payment. Equally, when such payment was made by an endorser, such endorser has similar right against the drawer and all the previous endorsers. However, if the paying endorser wishes to eliminate the liability of an earlier endorser, he can do so by cancelling that other’s endorsement. This, automatically, has the effect of releasing the liabilities of those endorsers intermediate in sequence between the endorser paying the bill and the one whose endorsement had been cancelled.¹⁶¹ Again, as already mentioned, payment in due course by any person *supra* protest does not discharge the bill and duties of the holder as regards the party, for whose honour he had paid and all the parties liable to the party.¹⁶²

Finally, under the provision of sections 60 and 76 of the Act, when a banker pays a cheque drawn on him, “in good faith and in the ordinary course of business”, he is deemed to have paid in due course. This has the statutory effect of discharging the instrument and thereby all the parties thereto and no further

¹⁵⁸ S.24

¹⁵⁹ Ss.2, 8(3).

¹⁶⁰ See above Chapter 8.7.6.

¹⁶¹ S.59(2); see also Discharge by cancellation, Chapter 8.7.5, et seq.

¹⁶² See above chapter 8.5.4, et deq

liability enures under it.¹⁶³ Payment itself must be made by a legal tender and this may take the form of issuance of a cheque or banker's draft. When the payment is by means of a cheque, this is conditional in the sense that the rights of the recipient is temporarily suspended by revived if an when the cheque is dishonoured by non-payment.

Discharge by Negotiation to Acceptor

When the acceptor of a bill subsequently, at its maturity, becomes the holder of it in his own right, the bill is discharged forthwith. This is in accordance with the provisions of section 61 of the Act. Such will be the case when the acceptor in the course of business effects a valid and proper negotiation or discounting of the bill from a holder back to himself at the relevant time. This has the effect of making himself the acceptor, a primary party, liable to himself the holder, a secondary party. The rationale behind the principle enshrined in the provision is that a present right and a present liability in respect of the same matter and which are united in the person cancel each other. Put in another way, a man cannot claim from himself or be the defendant and the plaintiff on the same claim, at the same time and in respect of the same transaction.

In *Neale v. Turton*,¹⁶⁴ the plaintiff, a partner in a firm drew bills on the directors of the company for goods supplied by him and his brother to the company. The bills were accepted for the directors by the secretary of the firm, who had authority to accept bills drawn by the plaintiff's brother. It was held that the plaintiff could not recover on these bills against the firm because the case "is that of one partner drawing on the whole firm, including himself. There is no principle by which a man can be at the same time plaintiff and defendant".¹⁶⁵

In order for any negotiation to the acceptor to operate as a valid and proper discharge of a bill, under section 61, the acceptor must have become the holder of the bill in his own right. The effect of this phrase is that should the acceptor become a holder other than a bona fide holder with overriding personal title the bill is not discharged, thus if he becomes the agent or administrator of the holder's estate, at maturity, the bill is not discharged. This is because he is subject to another controlling power and cannot therefore discharge the bill in his personal capacity. He must act in accordance with the power bestowed upon him and under the superintendence of the other power.

¹⁶³ See the judgment of Cockburn, C.J, in *Charles v. Blackwell* [1827] 130 E.R. 725

¹⁶⁴ See [1827] 130 E.R. 725, at p. 726

¹⁶⁵ See [1827] 130 E.R. 725, at p. 726, per Best CJ

Discharge of Express Waiver or Renunciation

Section 62(1) of the Act provides, *inter alia*, that when the holder of a bill at or after maturity absolutely and unconditionally renounces his right against the acceptor, the bill is discharged. This effect is achieved even though contrary to the principle of common law no consideration may have been given for the renunciation.¹⁶⁶ As already pointed out, the acceptor is the person primarily liable on a bill, all the other parties stand in the same position as sureties to him. It is logical therefore that on his discharge, all the other parties should also stand discharged. Consequently, if all the parties are thus discharged, the bill itself is discharged too.

Although section 62(1) employs the word renounce or renunciation, the side note to the sub-section prefers the word waiver, indicating that those words had been used synonymously. Perhaps the word release may be a better choice which word in itself connotes waiver or renunciation. Thus we can more conveniently talk of the holder releasing the acceptor of his obligation or liability absolutely and unconditionally.

Section 62(1) also requires that for a waiver or renunciation to possess the faculty, it must be in writing unless the bill is delivered up to the acceptor. In *Rimalt v. Cartwright*,¹⁶⁷ the holder accepted a verbal offer of an acceptor to pay a composition to his creditors in discharge of his liabilities. It was held that that was not a renunciation “in writing” within the meaning of section 62(1).

It is also requirement under section 62(1) that a verbal renunciation unaccompanied by the delivery of the bill to the acceptor is ineffective. Therefore a verbal renunciation accompanied by the delivery of the bill to any other party other than the acceptor, such as an endorser or the drawer, cannot operate as a discharge of it. Thus in *Edwards v. Walter*,¹⁶⁸ the holder of a promissory note voluntarily delivered it up, after the death of the maker, to the devisee of his real estate, whom he had charged with the payment of his debts. It was held that the delivery could not operate as a renunciation of the note. The justification of this decision is that the maker who would have become the acceptor had died and the renunciation and delivery up of the note was made not to him but to the devisee of his estate. It could not therefore be endowed with the requisite faculty.

It should also be noted that section 62(2) permits renunciation of a right before the maturity of the bill. But it also provides that nothing in the section shall prejudice the rights of a holder in due course who had no notice of such renunciation. The sub-section obviously is concerned with the renunciation of

¹⁶⁶ See *Forster v. Dowber* [1851] 155 E.R. 785. At [791 per Parke B

¹⁶⁷ S. 63(3) and see *Prince v. Oriental Bank* [1878] 3 App. Cas

¹⁶⁸ [1859] 7 C.B. (N.S.) 82

liabilities of any other party other than the acceptor. On the other hand, it does not deal with the effect on the bill of such renunciation. However, if the relationship of the parties concerned is likened to that of principal debtor and surety, a release of the former automatically operates as a release of the latter. Therefore, unless all the parties are in turn released, this will not operate to discharge the bill. It would appear generally that a renunciation under section 62(2) could secure the discharge of the bill *per se*.

Discharge by Cancellation

Cancellation as a means of discharging a bill within section 63 of the Act, in subsection (1) it is provided that where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged, there factors or requirements are sine qua non for a valid and effective operation of this provision, namely, (a) there must be an intentional cancellation, (b) the cancellation must be by the holder or his agent, and (c) the cancellation must be apparent on the face of the bill. Each of these requires some detailed examination.

- a. **Intentional Cancellation:** In subsection (2) it further provided that cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative. However, the sub-section, in such a case, places the burden of proof on the party alleging that the cancellation was made unintentionally, or under a mistake, or without authority to prove the same.
- b. **By the Holder or His Agent:** For the cancellation to be valid and effective it must be made by the holder or his authorised agent. This is significant because it is only if you are the holder of a bill that you are entitled to any right of claim under it. As far as cancellation by an agent is concerned, this is an adoption of the law of agency which makes a principal liable to third parties for an authorised act of his agent. We may recall that under section 93 of the Act where an act is required to be done by a party, such party can effectively perform it by himself. Or by his authority.
- c. **Apparent Cancellation:** In other for a cancellation to be valid and effective in discharging a bill, it is also required that the cancellation must be apparent on the face of the bill. In *Ingham v. Primrose*, a bill had been turn in to two but picked up and mended and endorsed to a holder for value without notice. It was held that cancellation was not apparent or manifest on the face of the bill and therefore a bona fide holder for value of the bill after the mending was entitled to recover against the acceptor. On the contrary, *Scholey v. Ramsbottom*¹⁶⁹ a cheque was turn into four pieces and thrown away. The four

¹⁶⁹ [1810] 2 Camp. 485

pieces where subsequently and neatly pasted together upon another slip of paper, but with the ends quite visible and the face of the cheque soiled and dirty. It was held that no holder of the cheque in such condition could enforce it because the paper bore on the face of it signs of something having been done to it, which was characteristic of an intention to destroy or annul it.

Finally, sub-section (2) provides that a party to a bill may be discharged in like manner by intentional cancellation of his signature by the holder or his authority agent. In such a case, any endorser who would have had a recourse against the party whose signature is cancelled is also discharged. This is consistent with the principle that the discharge of a party automatically discharges his sureties. Thus, the cancellation of the acceptor's signature as the party primary liability will discharge all the parties and consequently the bill. However, the cancellation of the drawer's or any endorser's signature will discharge all the subsequent endorsers only.

Discharge of Alteration

At common law, a party to a bill has long been protected against any alteration to which he did not expressly or impliedly consent or agree. The rationale behind this position of the law is that if a party is made liable to such an altered bill, it would be tantamount to unilaterally changing the terms of a contract mutually agreed. Thus any alteration discharges all the parties who did not consent to such alteration. If, therefore, no party consented to an alteration, the bill and all the parties irrespective of who made the alteration become discharged.

Section 64(1) of the Act essentially affirms this position though with certain minor limitation. It provides that: "Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent endorsers. Provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hand of a holder in due course, such holder may avail himself of the bill as if it had not been altered and may enforce payment of it according to its original tenor."

For an alteration to be valid and effective under the section, it must be material in form. Subsection (2) states definitively that an alteration of the date, the sum payable, the time of payment, the place of payment are material; it states further that the same is the case where a bill has been accepted generally, with the addition of place of payment without the acceptor's assent. The meaning of "material alteration" for this purpose has been the subject of many judicial decisions. A general test was given by Brett L.J. in *Suffel v. Bank of England*.¹⁷⁰ In

¹⁷⁰ [1822] 9 QBD 555

that case, some Bank of England notes had been altered by erasing the numbers upon them and substituting others, with the object of preventing them from being traced, as payment has been stopped and a notice issued specifying their numbers. The Learned Lord Justice stated in this respect that:¹⁷¹ “Any alteration of an instrument seems to me to be material which would alter the business effect of the instrument if used for any ordinary business purpose for which such an instrument or any part of it is used.”

In *Koch v. Dicks*,¹⁷² some inland bills which on the face of them were purported to have been drawn in London had this place altered to read Deisslingen, a town in Germany instead. This had the effect of converting the bill into foreign bills. It was held that an alteration which affected rights and obligations a between the parties was a material alteration within the meaning of section 64(1) of the Act. It was held further that this is so irrespective of whether the alteration was beneficial or prejudicial to the party making it. Slessor L.J. stated that the word “material” means, in addition to the matters specifically mentioned in sub-section (2) of section 64, (any alteration which would produce a change in the legal nature of the instrument.

On the contrary, it has been held that an alteration which merely has the effect of converting an instrument into a valid bill is not such a material alteration. Thus in *Daarnhouwer & Co. Ltd. v. Christian & Co. Ltd. and Anor*,¹⁷³ it was held that an alteration of a bill by the addition of its maturity date after acceptance was not a material alteration within the meaning of section 64(1) and such that will discharge the bill. It has also been held that an alteration which was effected by accident would not attract the operation of provision of the section.¹⁷⁴ Finally, it has been held that an alteration is apparent within the meaning of the proviso to section 64(1) if it is of such a kind that it would be observed and noticed by a prospective holder who scrutinized the instrument which he is contemplating taking with reasonable care.¹⁷⁵

Cheques

Definition of a Cheque

With the possible exception of bank notes, the cheque is the commonest and the most widely employed of all negotiable instruments in Nigeria today. Section 73 of the Act defines a cheque as “a bill of exchange drawn on a banker and payable on demand”. It is pertinent to point out that the section provides further that

¹⁷¹ Ibid. at p.568

¹⁷² [1932] All E.R. 476

¹⁷³ [1967] N.C.L.R. 434; see also *Forster v. Driscoll* [1929] 1 K.B. 478, 494 per Scrutton, L.J.

¹⁷⁴ See *Hong Kong-Shanghai Bank v. Lolee Shai* [1928] A.C. 181.

¹⁷⁵ See *Woolatt v. Stanley* [1928] 138 L.T. 620, 622 per Slater L.J.

exception as otherwise provided in Part III of the Act, the provisions of the Act applicable to a bill of exchange payable on demand apply to a cheque. Therefore in determining whether or not an instrument is a cheque recourse must be had to the definition of a bill of exchange as contained in section 3(1) of the Act. Against this background, it is only possible to achieve a full definition of a cheque by reading section 73 in conjunction with section 3(1) of the Act. When this is done, we may come to a full definition of a cheque as follows:

A cheque is an unconditional order in writing, addressed by one person to a banker, signed by the person giving it, requiring the banker to pay on demand a sum certain in money to or to the order of a specified person or bearer.

Although a type of bill of exchange, the cheque differs from an ordinary bill in some acknowledged respects. First, unlike an ordinary bill, the drawee of a cheque must be a bank and the instrument itself payable on demand. Secondly, ordinary bills are required to be drawn in sets but this is not the case with cheques. Thirdly, because a cheque is payable on demand, it does not require acceptance, unlike an ordinary bill, so that the holder cannot sue the drawer bank. Fourthly, unlike the drawer of an ordinary bill, the drawer of a cheque is under a duty to the bank to take reasonable care in drawing so as not to facilitate alteration. Fifthly, the bank unlike the drawee of an ordinary bill is protected against a forged or an unauthorized endorsement. Sixthly, the drawer of a cheque unlike that of an ordinary bill is not fully discharged by failure of the holder to present the instrument for payment within a reasonable time. Finally, unlike in the case of an ordinary bill, notice of dishonour to the drawer of a cheque is rarely necessary to make him liable on the instrument. On the other hand the rules relating to crossing do not apply to ordinary bills.

The Form of a Cheque

It is also pertinent to realise that just as in the case of an ordinary bill, a cheque takes form. A customer may sometimes authorize his bank to make payments from his account by instruments other than cheques. Most of these may be valid orders but would not normally possess the essential characteristics of a negotiable instrument. On the other hand, customers have been known to draw cheques reading *Pay Cash or Order*. As already pointed out, this does not render the cheque as an order payable to a specified person or to his order or to bearer. Consequently, the instrument falls outside the definition of both sections 3(1) and 73 of the Act.¹⁷⁶

The current practice, it is usual for cheques to be drawn on printed forms supplied by banks to their customers. Such printed forms usually indicate clearly

¹⁷⁶ See Chapter 7.5.1 (h) above

the drawee bank and provide ample spaces for the payee's name and for the sum payable both in words and figures. In more advance countries, several banks currently issue "cheque cards" to their customers which, under contractual arrangement, enables them to draw cash up to an agreed sum from their accounts. The effect of all these is to render any discussion on the form of cheque somehow difficult. In the final analysis, there are basically two forms a cheque may take, namely, an open or crossed cheque. We may consider these in some detail.

Open Cheques

An open or uncrossed cheque is one which may be paid over the counter of the drawee bank. It may be crossed by the payee and paid into his current account or endorsed to someone else. If it is a bearer cheque, it may be paid to anyone presenting it for payment. On the other hand, if it is an order cheque, it may be paid to the payee only after an appropriate officer of the drawee bank has satisfied himself as to the identity of the payee or indorsee as the case may be.

Crossed Cheques

A cheque is said to be crossed when it bears two parallel transverse lines across its face. Such transverse lines may be drawn across any part of the face of the cheque, such as from the top to the bottom, right side to left side or across from one corner to another. The two transverse lines may be accompanied between the worlds such as and company or simply & Co. with or without the further words not negotiable or non-negotiable.

The original purpose of crossing is to guard against the loss that would result from an unauthorized party getting hold of the cheque and receiving payment thereof. The crossing itself is a signification that the cheque shall be payable only through a bank. It serves as an instruction to the paying bank to pay into the account of the collecting bank or to the specified person's (payee) account and not directly to the holder by cash over the counter. This applies even if the same bank is both the paying and the collecting bank to do otherwise renders the paying bank liable in law to the drawer for any loss suffered thereby. In *Ladipo v. Standard Bank of Nigeria Ltd.*¹⁷⁷ the plaintiff drew a crossed cheque on the defendants, his banker. The later paid the cheque by cash across the counter and debited the plaintiff's account with the sum. In an action by the plaintiff arising therefrom, the court, in entering judgement in favour of the plaintiff, held that under the Nigerian Law a banker who paid a crossed cheque otherwise than as provided by law, that is through another banker, shall be liable, where loss is sustained to the true owner thereof.

¹⁷⁷ [1967] NCLR 469.

The law recognizes only two types of crossing, namely general and special crossing. According to section 78(1) of the Act, a general crossing is constituted where the cheque bears the two transverse parallel lines simply or with the words and company or any abbreviation thereof and with or without the words not negotiable. In sub-section (2) of the section, it is provided further that a special crossing is constituted where the cheque bears the two parallel transverse lines in addition the name of a bank, with or without the words not negotiable. Where bank, while in the case of special crossing, it must be made through the particular bank specified in the crossing. At the time of issue of a cheque, the drawer has the first right to cross the cheque, either generally or specially. After issue, the right devolves on the holder, who may cross an uncrossed cheque, either generally or specially, or convert a general crossing into a special crossing or add the words “not negotiable” to any crossing. Where the cheque is crossed specially to a bank, that bank may cross it specially to another bank where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.¹⁷⁸

In addition to the words not negotiable, there are other additional words which although not formally recognised by the Act are nevertheless accepted as a matter of banking practice. These are *Account (A/C) Payee or Account (A/C) Payee Only*. Sometimes, a generally crossed cheque may be open through the addition of the words *Pay Cash or Pay Cash Only* to the crossing. We may examine further the significance of the inclusion of these words.

a. *Not (Non) Negotiable*. The use of the words not negotiable or non-negotiable only has any effect if accompanying one of the regular crossings indicated above. This is clear from the wording of both sections 78(2) and 83 of the Act. There is sometimes a misapprehension that the use of those words on a cheque restricts its transferability. In practice it is often thought that a cheque containing those words must be paid through the banker of the payee. However, it is by reference to the provisions of section 83 that the true statutory effect or significance of their use could be better perceived. This section provides that:

“Where a person takes a crossed cheque which bears on it the words ‘not negotiable’, he shall not have and shall not be capable of giving a bearer title to the cheque than that which the person from whom he took it from had.”

The practical effect of this appears to be that a crossed cheque bearing such words remains transferable though deprived of its character of being freely negotiable. A transferee of such a cheque takes it subject to equities and all the defects it might have at the time of transfer to him so that he cannot acquire a

¹⁷⁸ S. 79 of the Act.

better title to it than his transferor had. If therefore there was no defect in the title to it than his transferor and the transferee took it honestly or in good faith and for valuable consideration, the cheque may be transferred and practically, no adverse effect enures. On the other hand, if there were defects, however honestly the transferee had acted and for whatever valuable consideration he may have given for the cheque, he cannot acquire a better title to it or its proceeds or any better right against a prior party to it than his transferor had at the time of the transfer to him

Significance and statutory effect of the incorporation of those words into a crossing were fully discussed in *Great Western Railway Co. v. London and County Banking Co.*¹⁷⁹ In that case, H. having by false pretences obtained from the appellant company a cheque crossed with the words “& Co.” and marked with further words not negotiable presented it to the respondent bank. The bank, at the request of H., paid part of the amount of the cheque to one of their customers and handed the balance to H. in cash. After the respondent bank had received the payment of the cheque from the drawee bank, H’s fraud was discovered and the appellants sued the respondents seeking the recovery of the amount of the cheque. The respondents sought to distinguish between the cheque and its proceeds arguing that section 81 of the Bills of Exchange Act 1882,¹⁸⁰ in terms affected the title to the cheque but not the proceeds thereof so that an innocent holder of such a cheque who obtains the proceeds could keep them as against the true owner of the cheque.

Lord Lindley, in his judgment stated that “everyone who takes a cheque marked ‘not negotiable’ takes it at his own risk, and his title to the money got by its means is as defective as his title to the cheque itself.”¹⁸¹ The Earl of Halsbury, L.C. emphasized the importance of recognizing that a person who takes a cheque which has upon its face the words “not negotiable” and treats it as a negotiable security will be taking the risk of the person for whom he negotiated it having no title to it. Rejecting the respondent’s argument, he said:¹⁸²

“The supposed distinction between the cheque itself and the title to the money obtained or represented by it seems to be to be absolutely illusory. The language of the statute seems to me to be clear. It will absolutely be defeated by holding that a fraudulent holder of the cheque could give a title either to the cheque or the money. What the banks are really insisting upon is the valid negotiability of a cheque which was fraudulently obtained, and which is enacted

¹⁷⁹ [1901] AC 414.

¹⁸⁰ s. 83 of the Nigerian Act of 1991.

¹⁸¹ [1901] AC 414, at p.424.

¹⁸² Ibid, at p.418.

by the statute shall give no better title than that which the person from whom it was taken himself possessed.”

b. *Account Payee or Account Payee Only*: The use of these words on cheques in addition to the regular crossing is often encountered in banking practices. The Bills of Exchange Act does not mention or refer to such words and in consequence it is sometimes argued that their use is illegal and of no effect. Support for this view is often sought in the provision of section 80 of the Act, which states that: “A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.”

This raises the issue of whether the use of such words in addition to the regular crossing ordinarily has the effect of obliterating, adding or altering the crossing. Where those words are actually part of the original crossing, it is doubtful if the argument can be sustained. However, where they were not part of the original crossing, e.g., where the crossing was constituted simply by the two parallel transverse lines and the holder, acting within the competence and discretion under section 79 inserted those words, he may be considered as having added to or altered the crossing. In such a case, the argument is sustainable. That the use of those words may be valid received judicial recognition in *Bevan v. Nation Bank*,¹⁸³ where the court elucidated upon the effect and significance of their use. In that case, it was sought to argue that it was negligent for a banker to place a cheque which the face of it was marked “a/c of payee”. Channell, J. expatiating observed as follows:¹⁸⁴

“That marking was not provided for by the Bills of Exchange Act. It had grown up in order further to protect the drawer of a cheque against the consequences of its being lost or stolen. It was a direction to the receiving banker that the drawer desired to pay the particular cheque in the bank which kept the account of the payee. To disregard a direction of that kind, if the banker had information which might lead him to think that the account into which he was paying the amount was not the payee’s account would, in my opinion be negligent.”

It has been held that the use of those words have the practical effect as a mere direction to the receiving banker as to how the money is to be dealt with after its receipt.¹⁸⁵ It has also been said that their use does neither prohibit transfer of the cheque nor affect its negotiability but has the effect of putting a banker on enquiry

¹⁸³ [1901] 23 TLR 65.

¹⁸⁴ *Ibid*, at p.

¹⁸⁵ *Akorokeri (Atlantic) Mine Ltd. v. Economic Bank Ltd.* [1904] 2 KB 465, at p. 475, per Bingham, J.

if asked to collect such a cheque for or from someone other than the payee.¹⁸⁶ This position thus appears therefore to create some legal anomaly since invariably the drawer of such a cheque can thus employ it to impose a duty of enquiry upon the collecting bank even though there would not generally have been a contractual link between the drawer and the collecting bank.

Sometimes, the drawer of a cheque may employ the further words *account payee only* instead or in place of *account payee*. This has raised the further question as to whether there is an added significance by the inclusion of the further word *only*. Bank, L.J. in *Importers Company v. Westminster Bank Ltd.*¹⁸⁷ had no hesitation in holding that no further significance is meant or involved. He had observed that the marking of those further words amounted to a direction to anyone handling the cheque that they were only to deal with it in such a way that the proceeds must pass into the account of the payee and that anybody who disregarded that direction acted contrary to the express direction on the face of the cheque and must be taken to have acted negligently.¹⁸⁸ In *Abimbola v. Bank of America*,¹⁸⁹ a cheque in favour of a firm of partnership, Herietta Osborne & Co., drawn on the CBN for the sum of ₦17,700 was crossed *account payee only*. The cheque was subsequently endorsed by one of the partners in the firm to one Mr. Narson and his banker, the defendants, collected it for him. In an action by the other partner for halve of the sum being his own share of the partnership money, the defendant bank was held liable for collecting the said cheque through the account of someone who was not named as the payee.

Opening a Crossed Cheque

It is a fairly common practice to find the payee or endorsee of a crossed cheque, especially when the cheque itself embodies an already printed crossing, wishing to open the cheque. A crossed cheque is opened by the drawer writing over the crossing such words as open cheque or pay cash and adding his usual signature. Such words serve as an instruction to the paying bank that it may ignore the crossing and pay cash provided that this is properly and appropriately signed or initialled. If the paying bank pays someone else other than the true owner, on the strength of an opening, the bank would be liable to the true owner if it transpired that the instruction to open did not emanate from the drawer.

¹⁸⁶ *National Bank Ltd. v. Silkie* [1891] 1 QB 425, at p.443, per Lindey, LJ.

¹⁸⁷ [1927] 2 KB 297.

¹⁸⁸ *Ibid*, at p. 301 – Atkins, LJ. Treated it likewise while agreeing with the statement of Bingham, J. in *Akrokerri (Atlantic Mines) Ltd.*, *supra*, note 10.

¹⁸⁹ [1977] 4 CCHC] 547.

Effect of Crossing

The general effect of crossing a cheque, as shown above is to place some restriction on its payment and thereby act as safeguard against fraud or other illegal dealing with it. Thus it minimizes the risk of loss if the cheque is lost or stolen. Since the paying bank is only authorized to pay a crossed cheque to another bank or to the account of a specified payee, the finder or thief of a crossed cheque must either have an account in the bank or make an arrangement with someone who has, if he wishes to collect the proceeds of the cheque. This invariably implies delay during which the loss or theft may be discovered and payment stopped. Even if the cheque is paid, the account for which it was collected can be traced and the malefactor identified with ease. Finally, except in certain circumstances, a bank which pays a cheque in contravention of its crossing is liable to the true owner of the cheque for any loss he may sustain as a result. In *Ladipo v. Standard Bank of Nigeria Ltd.*, *supra*, it was held, *inter alia*, that a bank cannot debit a payment to a customer's account if such payment was unauthorized because it was made negligently or contrary to the mandate of the customer.

Payment of Cheques

The relationship between a banker and his customers, as we have shown, is that of debtor and creditor. In that relationship the banker borrow money from the customer on the term that he will repay the loan in accordance with the mandate of the customer. This mandate is formally actualized in drawing of the cheques by the customer on the bank. The obligation of the banker to pay cheque thus drawn by the customer depends firstly on three main general considerations. These are that:

- a. The relationship of banker and customer subsists at the time of payment;
- b. There is obligation on the banker to honour the particular cheque; and
- c. The particular cheque is in order

All this have already been discussed in relation to the duty of the banker to honour the customer's cheques.¹⁹⁰

There are however, other conditions precedent for payment, namely:

- a. That demand must have been made by the customer;
- b. That the demand was made at the branch of the bank where the customer's account is kept;
- c. That the demand was supported by a credit balance in the customer's account.
- d. That there was available in the customer's account sufficient fund to cover the cheque; and

¹⁹⁰ See Chapter 4.4.1. above.

- e. That there was authority to draw the cheque.
We shall examine each of these conditions in some detail.

Demand Necessary

The general rule on the obligation of the debtor to repay his creditor is often subsumed in the general expression that “the debtor must seek his creditor and pay him”. Following from this, the issue has arisen as to whether it is necessary for the creditor to make a demand on his debtor. On this, it has been held that “general, a request for the payment of a debt is quite immaterial, unless the parties to the contract have stipulated that it should be made.”¹⁹¹ Pickford, L.J. examined the issue in some detail in *Bradford Old Bank v. Sutcliffe*,¹⁹² in which the promise of the surety to pay on demand if his principal does not was considered. It was argued on behalf of the defendant that the words on demand should be ignored because the money was due and therefore a demand was unnecessary and added nothing to the liability. The learned lord justice, in relation to the question, expatiated as follows:¹⁹³

This proposition is true in the case of what has been called a direct liability, for example, for money lent. There, the liability exists as soon as the loan is made, and a promise to pay on demand adds nothing to it as in the case of promissory note for the amount payable on demand and the words on demand may be neglected. It is however, been long ago in cases more particularly mentioned by the members of the court that this doctrine does not apply to what has been called collateral promise or collateral debt, and I think a promise by a surety to pay the original debt is such a collateral promise, or creates such a collateral debt.

In the matter presently under consideration, the question has arisen as to whether or not the promise by a banker to repay the money borrowed from his customer is such a collateral promise or creates such a collateral debt. If the reply is in the negative, then the banker would undoubtedly be in a continuous state of default and the customer would be entitled to sue on any balance of his account without first demanding to be paid. However, as a cheque is defined under the Act as being payable on demand, the debtor need be informed by demand of the amount he is being called upon to pay. This is invariably so since the creditor is not obliged to demand, and rarely does demand the whole amount standing to his credit in the bank at once. The English Court of Appeal in *Joachimson v. Swiss Bank Corporation*, *supra*, clearly laid down the principle applicable and this that

¹⁹¹ Per Parke B. in *Walton v. Mascall* [1844] 13 M. & W. 458 and quoted by Scrutton, L.J. in *Bradford Old Bank v. Sutcliffe* [1918] 2 KB 833, at p.848.

¹⁹² [1918] 2 KB 833.

¹⁹³ *Ibid*, at p. 840.

the banker's debt is not repayable without previous demand by the customer. Lord Atkins, in much celebration exposition said:¹⁹⁴

"The bank has borrowed the money and is under the ordinary obligation of a borrower to pay...The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch...I think it is necessary a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept."

This position was subsequently re-affirmed by the Federal Supreme Court in *Akwule & Ors, v. R.* where Ademola CJF said,¹⁹⁵

"The relationship between a banker and a customer is that of debtor and creditor in respect of the money deposited with the banker by the customer. This position becomes clearer when a customer asks for his money. The bank undertakes to pay cheques of the customer drawn on his current account; thus the bank becomes a debtor to the amount, which must be paid on demand."

Demand Must Be at Branch Residence of Account

It is clear from the above statement of Lord Atkins in Joachimson's case, *supra*, that the obligation on the banker to repay accrues only when the customer directs his demand by cheque to the branch where his account resides. In *Woodland v. Fear*,¹⁹⁶ the issue for determination is whether a customer who maintains a current account at a branch of a bank can have his cheque paid at another branch of the same bank. Lord Cambell held that a cheque is not drawn on a banking company generally but on the bank where the customer's account is kept and balance held. He maintained that:¹⁹⁷

To hold that the customer of one branch, keeping his cash and account there, has a right to have his cheque paid at all or any of the branches is to suppose a state of circumstances inconsistent with any sage dealing on the part of the banker; but it cannot be presumed without direct evidence of such an agreement, and the giving on the one hand and the accepting on the other of a limited cheque-book seems intended to guard against such an inference.

The same principle underlie the judgement of the Privy Council in *The King v. Lovitt & Ors.*,¹⁹⁸ but which was in reference to a deposit account. Lord Robson,

¹⁹⁴ [1921] 3 KB 110, at p.127, emphasis mine.

¹⁹⁵ [1963] 1 All NLR 193, emphasis mine.

¹⁹⁶ [1857] 26 LJQB 202.

¹⁹⁷ *Ibid.*, at p. 204.

¹⁹⁸ [1911-12] 28 TLR 41.

delivering the lead judgment, referred to some of the earlier cases including *Woodland v. Fear*, *supra*, and expatiating said:¹⁹⁹

In each of these cases, the courts having regard to the necessary course of business between the parties, held that the bank has in some measure localized its obligation to its custom or creditor, so as to confine it, primarily at all events, to a particular branch.

The same principle has been extended to cases where the customer maintains severe accounts in different branches of the same bank but in different countries. This was the case in *Clare & Co. v. Dresdner Bank*,²⁰⁰ and it was held that there was no obligation on a bank with branches in different countries to pay in one country a debt due to a customer on a current account at a branch in another country. Rowlatt J. in declaring the principle of localization said:²⁰¹ “It seems to me that locality is an essential part of the debt-owing by a banker to his customer and that his liability to pay is limited to the place where the account is opened.”

All the above mentioned cases were considered, approved and applied in *Richardson v. Richardson and National Bank of India Ltd.*²⁰² There it was held that under the contract between the banker and the customer, the promise of the banker is to pay the money received from the customer at the branch of the bank where the customer’s account is kept. It was held further that the banker is not liable to pay until a demand for payment is made at the branch by the customer and that if such a demand is made at the correct branch and payment is refused or neglected, the banker can then be sued by the customer.

However, modern banking practice does not rule out completely that possibility of having a customer’s cheque paid at a branch other than that where the account of the customer is kept. This is possible where a satisfactory arrangement can be made between the banker and a particular customer. In this age of information technology, some of the most viable banks now link all their branches or some of them by a computer network system. This arrangement permits any customer of the bank to have his cheque cashed or paid at any of their branches or those so linked, such practice appear to have received the sanction of the courts. Thus in *Clare’s Case*, *supra*, Rowlatt, J. could not conceive the possibility that:²⁰³

“A man with £1,000 to his credit at a bank in New Zealand could come to London and demand payment of that sum from a London branch of that bank without giving any consideration for that convenience, or without giving time to

¹⁹⁹ *Ibid.*, at p.42.

²⁰⁰ [1914-15] All ER 617.

²⁰¹ *Ibid.*, at p. 618.

²⁰² [1927] All ER 92.

²⁰³ [1914-15] All ER 617, at p. 618

the branch in London to ascertain whether he was in fact a customer of the New Zealand bank and had that amount to the credit of his account there.”

In *Richardson’s Case*, *supra*, Hills, J. was perhaps more emphatic in his accommodation when he observed that:²⁰⁴

“It is the practice of banks, at the request of the customer, to transfer amounts to the credit of the customer from one account to another. Perhaps, it is an implied term of the contract that the bank shall, at the request of the customer, make such transfer at the expense of the customer, and if a conversation from one currency to another is necessary, at the rate of exchange ruling at the date of transfer.”

Account Must Be in Credit

Essentially, the duty of the banker to pay a customer’s cheque depends on there being sufficient money to the credit of the customer to cover the amount of the cheque. This duty is however extended to cover a situation where although the customer has no sufficient fund to his credit in his account the bank had extended to him an overdraft facility. In *Guthbert v. Roberts, Lubbock & Co.*,²⁰⁵ it was held that where a customer draws a cheque for sum in excess of the amount standing to the credit of his current account, it is in effect a request for a loan and if the cheque is honoured, the customer has borrowed money.

A customer may maintain more than one account in the same branch of his bank either in the same name or in different names. Where he draws a cheque upon one of the accounts with insufficient funds, the question arises as to whether the banker can pay from the account with sufficient funds or combine all or some of the accounts if non or some of them have insufficient funds. Sometimes, a customer may also maintain several accounts either in the same name or different names in different branches of the same bank. Although separate agencies, the branches are still agents of the same principle with which alone the customer contracted. Where he draws a cheque upon an account with insufficient fund in one branch, the question may also arise as to whether the banker can pay the cheque from an account with sufficient finds in another branch or pull together or combine all or some of the accounts in some or all of the branches to pay the cheque.

In *Garnett v. MacKewan*, *supra*, the plaintiff had two current accounts at two branches of the London and County Bank, was overdrawn. He drew a cheque upon his account at branch A., where he had funds and the brank refused to pay it

²⁰⁴ [1927] All ER 92, at p. 95

²⁰⁵ [1909] 2 Ch.D. 226.

because his account at branch B. was overdrawn. The court held that the bank was justified in doing so. Kelly, C.B. observed that:²⁰⁶

“It cannot be doubted that at any time, where there might have been a balance in the plaintiff’s favour at one branch, and a balance against him at another branch, it was competent to him to have transferred the balance in his favour at one branch, to the credit of his overdrawn account at the other branch, and so to balance the accounts. If that be so, there must surely be a correlative right on the part of the bankers to do the same thing.”

The issue invariably touches on the right and obligation of the banker to combine the account of the customer, either kept at the same branch or at different branches of the same bank. This issue has been extensively discussed in Chapter 5 of this book and to which reference can be made.²⁰⁷

Availability and Sufficiency of Funds

The law also requires that at the time the customer presents his cheque for payment, there must not only be available funds but sufficient enough to cover the whole amount of the cheque. The banker is not obliged to pay part of the amount, if it transpires that the amount standing to the credit of the customer in the account upon which the cheque was drawn was insufficient to pay the whole sum. However, this is subject to any agreement, express or implied between the customer and the bank to the contrary. In *Carew v. Duckworth*,²⁰⁸ the defendant had one hundred and six pounds to his credit when he drew a cheque for the sum of thirty pounds in favour of the plaintiff, with the request that the cheque was eventually presented for payment about thirteen days later, the bank balance in favour of the defendant was only one pound fifteen shillings and eleven pence. Bramwell, B. stated that the first question was whether the defendant had sufficient fund at the hands of the bank to meet the cheque. This question he held must depend practically on whether there were funds to such an amount as at the time of drawing as he could reasonably expect payment. Expatiating, he said:²⁰⁹

The question then must be whether there were any such funds as the drawer might reasonably and properly draw against, with an expectation that the draft would be honoured. ...Therefore as to this first question, I think there was evidence for the jury that there were no much funds in hand, from the time when the defendant would expect the cheque to be presented up to the time when it was presented in fact, as to give him ground to suppose that the cheque would be honoured...

²⁰⁶ [1872-73] 27 LT 560, at p.563

²⁰⁷ See Chapter 5.1.4, above.

²⁰⁸ [1868] LR 4 Exchq. 313.

²⁰⁹ *Ibid.*, at p.317

In *Indochemist v. National Bank of Nigeria Ltd.*,²¹⁰ the plaintiff, customer of the defendant bank, claimed that the bank had committed a breach of contract by dishonouring his cheque. The bank's reply was that it was not obliged to honour a customer's cheque if there were insufficient funds in his account. Mr. Justice Okagbue of the Enugu High Court held that it is an established law that a banker is bound to pay cheque drawn on him by a customer in a legal form provided that he has in his hands at the time sufficient and available funds for the purpose or provided that the cheques are within the limits of any agreed overdraft.

Sometimes, the problem may arise as to whether the banker can pay part of the sum of a cheque if the customer had at the time of its presentation some fund to his credit but insufficient to cover the whole amount of the cheque. It is thought that this cannot be done as paying part of the sum of a cheque will be tantamount strictly to not paying in accordance with the mandate of the customer. For example, a mandate to "pay X. ₦100.00" is not the same as "pay X ₦80.00". The bank may therefore decline to pay if it transpires that the customer had the lesser sum to his credit in his account. On the other hand, the banker is not obliged to decline payment since, as already discussed, its payment could tantamount to implied granting of an overdraft. If he does so, he is entitled to debit the account of the customer with the balance.

Where the banker has paid a cheque awaiting clearance, mere crediting the amount of the cheque to the creditor's account is not sufficient to entitle him to draw against its uncleared effect. For such fund to be available to meet the amount of the customer's cheque, it must be proved that there was an agreement, expressed or implied, with the banker permitting him to draw against the uncleared effect. In *Aliba v. Standard Bank of Nigeria Ltd.*,²¹¹ Mr. Justice Wheeler of the North Central State High Court held, inter alia, that it is in accordance with normal banking practice not to regard the funds represented by a cheque lodged for a customer's account as available for drawing against while the cheque remains uncleared. He held further that the words "effect uncleared" in their ordinary connotation when endorsed on a customer's cheque by a bank refusing payment denote at the time when the cheque was presented that sufficient funds were not available for drawing against in the customer's account merely because a cheque or cheques lodged for the account had not been cleared.

Authority to Draw Against the Customer's Account

It may be recalled that section 73 of the Act defined a cheque as a bill of exchange drawn on a banker and payable on demand. This does not categorically imply that

²¹⁰ [1976] NCLR 143.

²¹¹ [1976] NNLR, at p. 404

the cheque must be drawn personally by the customer owner of the account on which the cheque is drawn. Although invariably cheques are drawn by the customer personally, it would seem, at least theoretically, that a cheque need not be drawn by the customer personally. Indeed, section 25 and 26 of the Act makes it abundantly clear that a cheque may validly be signed by an agent for and on behalf of his principal or in a representative capacity. If a cheque is therefore drawn by a person who is not the customer but who has authority express or implied to draw, the cheque is a valid mandate to the banker to pay and may be validly paid by him.

Where the account is owned jointly, it is customary for the banker to honour only cheques drawn by all the parties in whose names the account stands. However, the parties may agree that only one or more of them can draw, in which case the banker may pay cheques drawn by those only. The common form of bank mandate relating to joint accounts embody the authority of the signatories to the bank to honour cheques drawn by either or both joint owners of the account, as the case may be, or the survivor. The effect of such a mandate is considered to be an indication of an intention of the joint owners and must be strictly observed by the banker.²¹²

Where the account is not that of an individual, it is customary for such a mandate to set out clearly the party or parties authorised to draw cheques on the account and the form in which it should be done. This is usually the case with accounts owned by clubs, unincorporated associations and the like. When this is not done, it is also customary for the banker to demand it. Where the account is that of a partnership, each partner, in the absence of any agreement to the contrary has, in law, the right to draw on the partnership account.²¹³ Upon the death of one partner or one of the partners, as the case may be, the surviving partner or partners has or have the right to draw cheques upon the partnership account.²¹⁴

Protection of Banker

The dual role of the banker in paying and collecting cheques for their customers and others has already been emphasized. Sometimes, in fulfilling these roles, the collecting banker may collect a cheque for a person other than the person actually entitled to receive the payment. The paying banker may not be aware of this fact while its responsibility ends when he pays the collecting banker since the latter is supposed to know the person for whom he is collecting. Thus in practice the bankers often run enormous risks in their performance of those roles. For

²¹² See *Brewerv. Westminster Bank Ltd.* [1952] 2 QB 650.

²¹³ See the English Partnership Act 1890, 24 Statutes 500, ss 5 & 8.

²¹⁴ See *Backhouse v. Chalton* [1878] 8 Ch.D. 444.

example, under the common law, where a person other than the true owner obtains payment of a cheque for himself, he, as well as every person implicated in the transaction, is liable in conversion to the true owner. The persons implicated in such a transaction include both the paying and the collecting bankers. The Bills of Exchange Act now includes some provisions designed to ameliorate the harshness of this common law principle, especially in their application to bankers. These provisions essentially sought to protect bankers against certain defaults in collecting and paying cheques. It is pertinent in considering this to bear in mind that bank officials deal with large number of cheques every day. It is therefore difficult if not the circumstances surrounding it with the detailed care and skill of detectives. We shall examine in some detail the essentials of this legal protection as they affect both the paying and the collecting banker.

Protection For the Paying Banker

We have already seen that the banker is under a general obligation to honour the cheques drawn on him by his customer and that he may be liable in damages to the customer if he fails to do so. We have also seen that if the banker pays a cheque drawn on him which transpires to be invalid, he may not be entitled to charge the amount of the cheque against the customer's account. The banker therefore may be confronted with great perils when paying his customer's cheques. Such perils are basically of three kinds and the Act has given limited protection in each case. First the customer's signature on the cheque may have been forged or unauthorized. Secondly, an endorsement on the cheque may have been forged, unauthorized. Secondly, an endorsement on the cheque itself may not have been endorsed at all or may have been fraudulently altered. We shall each examine each one of these in some detail for better understanding and appreciation of their import.

a. Forged or Unauthorised Signature

The meaning of forged or unauthorized signature has already been discussed in relation to the essentials of liability on a bill or note.²¹⁵ It is however necessary to recall the provision of section 24 of the Act, which states that:

"Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and not right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party

²¹⁵ See Chapter 8.2.2, above.

thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.”

Since by this provision a forged or unauthorized signature is a nullity and no right can be acquired through or under it, a banker who pays a cheque with such a signature does so to its detriment. However, a limited protection has been given under the section and that is where the customer “is precluded from setting up the forgery or want of authority.” Such will be the case where the customer had held out forgery or unauthorized signature as genuine. In *London and Riverplate Bank v. Bank of Liverpool*, *supra*, Mathew, J. expressed this principle of estoppel as follows: “If the plaintiff...so conducted himself as to lead the holder of the bill to believe that he considered the signature as genuine, he could not afterward withdraw from that position”.²¹⁶ In *Greenwood v. Martins Bank Ltd.*, *supra*, the plaintiff became aware of the forgeries of his signature by his wife and kept silent for eight months. In his judgment, Lord Tomlin observed that “the deliberate abstention from speaking in those circumstances seems to me to amount to a representation to the respondents that the forged cheques were in fact in order.”²¹⁷

b. Forged or Unauthorised Endorsement

The law governing the bankers’ protection under this head is contained in section 60 of the Ac, which provides as follows:

“When a bill payable to order on demand is drawn on a banker and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or an subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority.”

We may begin the discussion on this provision by pointing out first that if the protection given under the section is rightfully or validly claimed, the banker who so claims would be deemed to have paid the relevant cheque in due course. The further effect of this would be that the cheque is considered as discharged

²¹⁶[1896] 1 QB 7, at pp. 10-11, per Mathew, J.

²¹⁷ [1933] AC 51, at p.58.

under section 59 of the Act and no further action can lie in respect thereof. But to gain this protection, the banker not only must have paid the cheque but also would have done so in good faith and in the ordinary course of business. These emphatic words and phrases require further explanation for the better appreciation of the overall import of the provision.

(i) *The Meaning of Payment*

The meaning is not defined by the Act but under the English Bills of Exchange Act 1882, it has been given broad application. In *Bissel & Co. v. Fox Brother & Co.*,²¹⁸ it was held that the term did not necessarily mean payment in cash over the counter and that therefore crediting the account of a customer with the amount of a cheque is payment within the meaning of the Act. In *Meyer & Co. Ltd. v. Sze Hai Tong Banking & Insurance Ltd.*,²¹⁹ the appellant's cashier presented at the respondent's bank cheques drawn on the respondents in favour of the appellants and crossed generally. In exchange, he was handed cheques for the amount drawn for the respondents upon other banks and also crossed generally. It was held that the cheques drawn on the respondents were paid by the cheque given by exchange within the meaning of section 79(2) of the said English Act.

(ii) *Meaning of Good Faith*

The meaning of the term good faith has already been examined as an essential element of a holder in due course.²²⁰ It is pertinent to recall that section 92 of the Act states that "a thing is deemed to have been done in good faith within the meaning of the Act, where it is in fact done honestly, whether it be done negligently or not." In *Raphael v. Bank of England*, *supra*, the plaintiff was a money changer in Paris, he has received a circular from the defendants containing a list of stolen Bank of England notes with their serial numbers, subsequently, about twelve months after, he changed a stolen note included on the list without referring to the circular before doing so. The jury found that there had been no dishonesty on his part but simply inadvertence. It was therefore held that he was entitled to recover as a bona fide holder of the note in question.

In *Jones v. Gordon*, *supra*, a bill with a face value of one thousand seven hundred and twenty seven pounds (£1,727) was purchased for a derisory sum of two hundred pounds (£200). The House of Lords held that the discrepancy was sufficient to put the endorsee on enquiry as to the impropriety or otherwise of the endorser. Lord Blackburn opined that the fact of taking a bill of the holder, it is an

²¹⁸ [1885-86] 53 LTR 193, at p. 194, per Brett, MR.

²¹⁹ [1913] AC 847

²²⁰ See Chapter 7.6.7 (g), above.

important element in considering whether the man who gave the undervalue was acting *bona fide*, in ignorance and error, or was assisting in committing a fraud and avoiding making inquiries because they might be injurious to him. He expatiated profoundly on this matter in a powerful statement which has earlier been quoted.²²¹

Ordinary Course of Business

In the majority of cases, the courts have held that this is a matter on which expert bankers are best qualified to decide. They have in those occasions accorded great weight to the evidence of such expert bankers. However, it has been suggested that the term must refer to only recognized or customary course of business of the banking community as a whole rather than of any particular bank or group of banks.²²²

In *Jaochimson v. Swiss Banking Corporation*, *supra*, Atkin, L.J. defined the banker's promise to repay the customer's money as being "during banking hours". This appears to suggest that any payment outside the official recognized banking hours will not be paying during the ordinary course of business. In *Baines v. National Provincial Bank Ltd.*²²³ a cheque was paid five minutes after the official closing hours of the defendant bank and Lord Hewart, C.J. Upheld the payment. However, he observed as follows:²²⁴

"What precisely are the limits within which a bank can conduct business, having prescribed largely for its own convenience, particular times at which the doors of the building will be closed, is a large question which is not raised here. What is contended on behalf of the defendants is that they are entitled within a reasonable business margin of their advertised time for closing to deal with a cheque, not of course in the sense of dishonouring it, but in the sense of doing that which the cheque asks them to do, namely, to pay it. In my opinion, their contention is right..."

From this decision and especially the above quoted dictum of Lord Hewart, it is obvious that what constituted ordinary business in that context could not reasonably be extended to odd hours. Rather, it is limited to a very short period of time after the closing hours depending on the circumstances of each case. It may therefore be that in the final analysis, what constitutes ordinary course of business in this context is largely a question of what is reasonable in particular circumstance and it may not be possible to be dogmatic about it.

²²¹ [1877] 2 App. Cas. 616, at p. 629, note 97.

²²² See *Lloyds Bank Ltd. v. Swiss Bankerein* [1913] 108 LT, at p. 146, per Formwell, L.J.

²²³ [1927] 32 Comm. Cas. 216

²²⁴ *Ibid*, at p. 218.

In *Slingsby v. District Bank Ltd.*²²⁵ the payment of an order cheque bearing an irregular endorsement was held to have resulted in the forfeiture of the protection provided by section 60. Wright, J. stated that the words “in the ordinary course of business” does not cover a “departure from the terms of the mandate appearing on the face of the cheque or a failure to exact the correct endorsement”.²²⁶ This case can also serve as an authority for the view that payment in contravention of the crossing on a cheque cannot be in the ordinary course of business. It had also inferentially been so held in *Ladipo v. Standard Bank of Nigeria Ltd.*, *supra*, where a crossed cheque was paid across the counter in cash. Again, it has been held that acting negligently cannot for practical purposes be acting in the ordinary course of business within the meaning of that provision.²²⁷ The question whether paying a large sum of money over the counter could be considered as not paying in the ordinary course of business is not definitely decided.²²⁸

c. Unendorsement and Irregular Endorsement

We have already seen that the statutory protection granted under section 60 does not cover payment of a cheque with an irregular endorsement. In *Agbafé v. View Point Nigeria Ltd.*,²²⁹ a large sum of money was paid over the counter and Fiebai, J. sitting in a Jos High Court Held (Obiter) that without proper endorsement the paying banker fails to enjoy the protection afforded by section 60.

Section 76 of the Act as widened the field of protection granted under section 60 to include circumstances where the cheque was either irregularly endorsed or not endorsed at all. The section provides as follows:

1. Where a banker, good faith and in the ordinary course of business, pays a prescribed instrument drawn on him to a banker, he does so incur any liability by reason only if the absence of, or irregularity in, endorsement of the instrument and:
 - a. In the case of a cheque, he is deemed to have paid it in due course;
 - b. In the case of any other prescribed instrument, the payment discharges the instrument.
2. A prescribed instrument which is unendorsed but appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum mentioned in the instrument.

²²⁵ [1931] 2 KB 588.

²²⁶ *Ibid*, at p. 598

²²⁷ *Carpenter's Company v. Brit. Mutual Banking Co.* [1938] 1 KB 511, at p.532, per Greer LJ.

²²⁸ *Bank of England v. Vagliano Brothers* [1891] AC 107, at p. 118, per Lord Halsbury

²²⁹ [1977] NNLR 113.

Immunity from the absence of an endorsement and from the payment of an irregularly endorsed cheques are the primary objects of this section. There contingencies would have otherwise rendered the payment as being negligently made and out of the ordinary course of business as has already been shown above. The obligations to pay in good faith and in the ordinary course of business are again requirements as enshrined in section 60 discussed above. Therefore if a banker pays such a cheque in the circumstances mentioned in the section, he is likewise deemed to have paid in due course. The effect of this, is under section 60, is that he obtains a good discharge under section 59 of the Act.

The section is to be noted for its wide descriptions of the instruments that it apparently covers and for which the protection provided may be claimed. Under section 2(1) of the Act, a *prescribed instrument* for the purpose of the Act means any of the following instruments, namely:

- (i) A cheque;
- (ii) A document issued by a customer of a bank which is not a bill but is intended to enable a person obtain payment from the banker of sum mentioned in the document; and
- (iii) A draft drawn by a banker upon himself and payable on demand at an office of his bank.

d. *Fraudulent Alteration of Crossed Cheques*: Every crossed cheque, as already noted, is an instrument to pay a banker the amount mentioned therein; to any bank if crossed generally; and to the banker named if crossed specially. Therefore the paying banker is first and foremost duty bound to his customer to pay his cheque in accordance with the term of his crossing on his cheque. He is in addition statutorily liable to the true owner of the cheque if the latter suffers a loss as a consequence of the failure on his part to observe the crossing. Section 81(2) of the Act makes provision in this regard as follows:

Where a banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid.

A paying, however, is granted some protection against any obliteration of a crossing or unauthorized alteration of a cheque or its crossing in certain circumstances. Under the proviso to the subsection, it is stated that if a cheque at the time of presentment for payment does not appear to be crossed or has had its

crossing obliterated or has been added to or altered otherwise than as authorised by the Act, the banker paying the cheque is good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act and to payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Again the requirement of good faith, which we have already dealt with features and the significance of negligence is discussed fully in connection with the protection granted to collecting bankers below.²³⁰ It remains to mention that under section 82 of the Act, if a banker pays a crossed cheque to a banker if crossed generally or to the banker named if specially crossed or to an agent banker for collection “in good faith and without negligence”, he is placed in the same position as if he had paid the cheque to its true owner. This embodies a further protection and the significance is that if the banker pays a crossed cheque in accordance with its crossing in good faith and without negligence, the cheque is discharged and any party thereto would obtain a good discharge under section 59 of the Act. On the contrary, if the banker is negligent in paying or did not pay in good faith, the drawer can have a good claim against him if the payee or a subsequent transferee did not receive the benefit of the cheque.

The Protection of the Collecting Banker

Just as the Act in appropriate cases grants protection to a paying banker, so also does it do the same to the collecting banker. As already noted, a banker is under an obligation to act as a collecting banker to his customer for the cheques drawn in so doing must perform his duties diligently and if he delays or did not exercise the ordinary skill required of him as a banker, he is liable to the customer, if the latter suffers loss in consequence.²³¹ The more exacting responsibility of the collecting banker is perhaps his responsibility for conversion as the customer may not have title or may have a defective title to the cheque paid in for collection on his behalf. Under the common law, if a banker collects a cheque for a customer who is entitled or who has a defective title to the proceeds thereof, he is liable in conversion to the true owner of the cheque. The fact that he acted honestly but mistakenly affords him no defence.²³² It becomes pertinent to think about the tremendous number of cheques collected each day by bank officials to realise the

²³⁰ See Chapter 9.4.2 (a), above.

²³¹ See Chapter 4.4.2, above.

²³² See *Consolidated Company v. Curas & Sons* [1892] 1 KB 495.

risks bankers run if they are made liable for conversion absolutely. Accordingly, the Act has granted them limited statutory protection in certain circumstances against the risk of conversion.

This statutory protection now granted under section 77(2) of the Act covers not only dealings in respect of cheques but also in a wide variety of other instruments through which money can be paid into a bank account. The primary object of the provision is to eliminate the necessity that existed under the common law for a collecting banker to concern himself with endorsements. The provision states as follows:

Where a banker, in good faith and without negligence –

- a. Received payment for a customer of a prescribed instrument to which the customer has no title or a defective title; or
- b. Having credited the customer's account with the amount of such prescribed instrument, receives payment of the prescribed instrument for himself, the banker does not incur any liability to the true owner of the instrument by reason only of having received payment of it; and a banker is not to be treated for the purpose of this subsection as having been negligent by reason only of his failure to concern himself with the absence of, or irregularity in, endorsement of a prescribed instrument of which the customer in question appears to be the payee.

In order to bring himself within the protection granted by the subsection, the banker has to satisfy certain essential requirements which are set out therein. These are that he must have acted in good faith and without negligence and that he must have received payment of the cheque. Although the subsection uses the expression good faith and without negligence, both phrases invariably are used distinctly and as such each imposes a distinct obligation on the banker. But before embarking on an examination of these essential requirements, it is pertinent to note the instruments, the dealings in which the protection is granted. The subsection mentions these as prescribed instruments, which is defined in section 2(1) of the Act as,

- a. A cheque;
- b. A document issued by a customer of a bank which is not a bill but is intended to enable a person to obtain payment from the banker of the sum mentioned in the document;
- c. A draft drawn by a banker upon himself and payable on demand at an office of his bank.
- a. *In Good Faith*: This is not really a practical issue and is normally presumed in favour of the banker. In any case its character and significance have already

been discussed in relation to the protection granted to paying bankers.²³³ There is no reason to presume that the phrase has a different meaning or significance here.

- b. *Without Negligence*: Negligence in this connection refers to a breach of the duty of care to the customer for whom the banker is collecting but to the true owner of the cheque. In *Bissel & Co. v. Fox brothers & Co.*,²³⁴ Denman, J. was of the view that:²³⁵

The negligence contemplated...means the neglect of such reasonable precautions as ought to be taken with reference to the interests, not of the customer who purports to have, the section being framed wholly with reference to the liability of the banker to the true owner of the cheque, and not with reference to his liability to the customer.

In *A.C.B. v. Att.-General of Northern Nigeria*,²³⁶ the Supreme Court pointed out that negligence for the purpose of the provision differs from negligence as a separate ground of action and went on to observe that:²³⁷

The section does not create a ground of liability; it protects a banker who would otherwise be liable to the true owner of the cheque on a claim either for money had and received or for damages for conversion. On such a claim it is ordinarily immaterial whether the defendant acted negligently or not, but where the claim is brought by the true owner of a cheque against a banker the section creates a special exception to the normal rule that negligence is immaterial, and in relation to certain cheques it protects a banker who can show that he received payment in good faith and without negligence.

In *Attrib v. United Bank for Africa Ltd.*²³⁸ Alexander, J., of the Lagos High court reviewed the testy and measure of negligence required under the section and held, *inter alia*, that:

- (i) The best test of negligence on the part of the collecting banker is whether the circumstances of the transaction or actual or proposed conduct of the account are so out of the ordinary course of business that they ought to have aroused reasonable suspicion in his mind and caused him to make inquiries or to make references to satisfy himself as to the customer's identity and circumstance;

²³³ See Chapter 7.6.7 (g) above.

²³⁴ [1884-85] 51 LT 663.

²³⁵ *Ibid*, at p. 666. In *Slingsby v. Westminster Bank Ltd.* [1931] 2 KB 583, Finlay, J. stated that “the care must be that which a reasonable business man would exercise in his own affairs, and the clerks and other officials must display and exercise that degree of intelligence and knowledge ordinarily required of persons in their positions”, *ibid*, at p. 586.

²³⁶ [1967] 1 All NLR 76.

²³⁷ *Ibid.*, at pp. 79-80, emphasis mine.

²³⁸ [1967] NCLE 166.

- (ii) Where a banker collects a cheque for a customer who has no title or a defective title to the cheque, the banker is liable in conversion for the customer's lack of title once the true owner proves his title and the act of taking by the customer. The absence of negligence, intention or knowledge on the part of the banker are immaterial as defence unless the action arises under [the] section..., and the absence of ordinary prudence on the part of the true owner is immaterial whether the issue arises at common law or statute;
- (iii) A banker who receives payment for a customer of a cheque crossed generally or specially to himself, to which the customer has no title or a defective title, is guilty of negligence toward the true owner of the cheque if he fails to make enquires when the paying in of the cheque by the customer, coupled with the circumstances, antecedent and present, is so out of the ordinary course that it ought to have aroused doubt in the banker's mind, and he cannot then avail himself of the protection of [the] section;
- (iv) Where the banker relies on [the] section...as his defence to a claim founded on negligence in respect of the banker's receipt of payment for a customer of a cheque crossed to the customer, the burden of proof is on the banker to prove absence of negligence to the true owner.

Following *Attrib v. United Bank for Africa, supra*, Mr. Justice Lambo in *BEWAC Ltd. v. African Continental Bank Ltd.*²³⁹ held, *inter alia*, that the question whether a banker has acted without negligence so as to be protected by the section is a question of fact, the proof of which lies on the bank and that:

"The banker has to show that he acted with reasonable care in all material respects in opening the account and clearing the cheque, and will be unable to do so where the customer is a new customer and the banker has opened an account for him without obtaining references and making enquiries about him or have generally failed to observe normal banking practice in opening the account, or where the banker has notice as to the money not being the customer's, from the form of the cheque or from such irregularities from his endorsement as would obviously arouse suspicion."

Again in *Central Bank of Nigeria v. National Bank of Nigeria Ltd.*²⁴⁰ a Lagos high court had to decide the scope of the liability of a collecting banker for negligence. Adefarasin, C.J. (Lagos) held that:

²³⁹ [1973] NCLR 352.

²⁴⁰ [1976] NCLR 199.

(i) Unless he can prove that he has conformed to the normal standard of care of a prudent banker, and that the paying in of the cheque, coupled with the circumstances, antecedent and present, was not out of the ordinary course that it should have aroused doubt in his mind and cause him to make inquiries, and if he permits one of his customers to draw on an uncleared crossed cheque without making due enquiries where he has numerous indications to put him on guard against that customer, he will be liable to the true owner of the cheque.

(ii) That the relevant time for determining whether the banker has complied with the duty of care towards the true owner of a cheque is when he pays out the proceeds of the cheque to his own customer and so deprives the true owner of his right to follow the money into the banker's hands.

c. *Receive Payment*

In order to come within the regulation and control of the provision and be protected, the banker must have received payment of the instrument either for a customer or for himself. Under section 82 of the 1917 statute, the provision did not include the alternate requirement that the banker "having credited a customer account...receives payment for himself." It has therefore been held that the protection granted by the provision applies to cheques crossed before they are received by the banker and only where he received payment of such cheque as an agent for collection for the customer. He is not so protected where he had received payment as a holder of the cheque on his own account.²⁴¹

Under the same principle, Lord McNaughton, in *Capital and County Bank Ltd. v. Gordon*,²⁴² in an illuminating passage succinctly expatiated on the applicable principle and observed that:²⁴³

"The protection conferred by [the] section...is conferred only on a banker who receives payment for a customer – that is who receives payment as a mere agent for collection. It follows, I think, that if a banker does more than act as such agent he is not within the protection of the section. It is well settled that if a banker before collection credits a banker with the face value of a cheque paid into his account the banker becomes holder for value of the cheque. It is impossible, I think, to say that a banker is merely receiving payment of a cheque of which he is a holder for value."

Quoting with the dictum of Collins, MR in the English Court of Appeal he stated further that:²⁴⁴

²⁴¹ see *Grt. Westn. Rly. v. London County and Banking Co.* [1901] AC 414

²⁴² [1903] AC. 240.

²⁴³ *Ibid*, at p. 245.

²⁴⁴ *Ibid*, p.246; see the judgment of Lindley, LJ., at pp. 247-49.

“The protection afforded by [the] section must be limited to that which is necessary for the performance of the duty which by the legislature as to crossed cheques was imposed on bankers. If bankers deal with crossed cheques in the ordinary way in which bankers deal cheques other than crossed cheques at the present time, namely by treating them as cash, and upon receipt of them at once crediting the customer with the amount of them in the ordinary way instead of making themselves a mere conduit pipe for conveying the cheque to the bank on which it is drawn and received the money from that bank for their customer, I think that they are collecting the money, not merely for their customer, but chiefly for themselves and therefore are not protected by [the] section.”

However, the new provision which has adopted the amendment contained in section 2 of the 1964 Act clearly repeals not only the previous provision but overrules the line of reasoning in the above cases and invariably extends the protection to where the banker had received payment for himself.

Promissory Notes

Although the bill of exchange and cheques constitute or embody promises of some sort, the promissory note is *sui generis*. It constitutes a special kind of negotiation instruments just like the bill of exchange or cheque. But unlike them it possesses special unique properties that distinguish it from them, it is perhaps for this reason that while a cheque is defined in terms as a bill of exchange, a note is simply defined as a promise.

Definition and Character

Section 85(1) of the Act defines a promissory note as an unconditional promise in writing, made by one party to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of a specified person or to bearer.

A promissory note thus shares some of the essential attributes of a bill of exchange, which we have already discussed above.²⁴⁵ It is pertinent to mention that section 91(1) of the Act states that subject to the provisions of the Act and except as specified provided therein, the provisions of the Act relating to bills of exchange apply, with necessary modifications to promissory notes. In this regard, therefore, we may recall our discussions on such elements as signature, on demand, at a fixed or determinable future time, a sum certain in money, all of which are also relevant here. For our present purpose, we shall contend ourselves only with highlighting and discussing the important elements which are peculiar to promissory notes, since we have done so in regard to bills.

²⁴⁵ See Chapter 7.5.2, above.

The first of such elements is that there must be a valid and binding promise, that is an undertaking or engagement to pay the money, which must be embodied in a written document. This requirement signifies that the document invariably embodies a contractual promise. In *Jarvis v. Wilkins*,²⁴⁶ a written document containing a written undertaking to pay for goods ordered was held to be a memorandum of guarantee for the sale of the goods and not a promissory note. Lord Arbinge observed there that “the promise was made in contemplation of a sale of goods to be afterwards made, and it is a written undertaking that if the plaintiff will supply the goods ordered, the defendant will pay for them.”²⁴⁷

The second element is that the engagement or undertaking must be to pay the sum mentioned in the written document. Thus, it has been held that an I.O.U. (I owe you) is not a promissory note because it does not promise payment of the sum therein contained but only an acknowledgement of a debt.²⁴⁸ The same has been held of a receipt, which is merely an acknowledgment of money received. In *Aburkhan v. Attar Singh*,²⁴⁹ it was held that being primarily an acknowledgment of money received, even if it is coupled with a promise to pay, that will not make it a promissory note. In *Ismail v. Jivraj*,²⁵⁰ the East African Court of Appeal observed that, “in deciding whether any particular document is or is not a promissory note, the form of words used is immaterial. It must however, consist substantially of a promise to pay and nothing else.”²⁵¹

The third element consists in the requirement that the written promise to pay must be unconditional to constitute a promissory note. In *Soaga v. Fasasi*,²⁵² the plaintiff sought to recover an amount outstanding from a debt owed him by the defendant, which debt was secured by a note promising to liquidate the sum. A Lagos high court held that being an unconditional promise made by the defendant in writing and delivered to the plaintiff, it was a valid promissory note and that the defendant was liable to the plaintiff on the instrument in accordance with its tenor. In *Kirkwood v. Carol & Anor.*,²⁵³ a condition attached to a joint and several promissory notes states that “no time given to or security taken from a composition or arrangement entered into with either party shall prejudice the right of the holder to proceed against any other party.” It was held that this did not deprive the instrument of its character as a promissory note because it did not

²⁴⁶ [1841] 151 ER 825.

²⁴⁷ Ibid, at p. 826; see also *Carrata Marble Co. Ltd. v. Alhaji Ado Ibrahim*, Lagos High Court, Suit No. ID119/71 (unreported).

²⁴⁸ See *Rofibi v. Savage* [1944] 17 NLR 77, at p.79

²⁴⁹ [1965] ALR Comm. 436.

²⁵⁰ Ibid, at p.

²⁵¹ Ibid, at p.

²⁵² [1976] 8 CCHCJ 2209.

²⁵³ [1903] 1 KB 531.

in any way qualify or cut down the unconditional promise. Again in the Indian case of *Subramania Iyear v. Muthuperumal Pillai*,²⁵⁴ it was held that a clause in a promissory note that if the promisor fails to pay he and his properties shall be liable for the principal, interest and all damages consequent on such default does not amount to an agreement making the liability of the promisor conditional and that it merely shows what the consequence of non-payment on demand could be and does not qualify the operation of the note.

Despite the statutory similarity between a promissory note and a bill of exchange, there exists some remarkable differences between them. They differ principally in the following ways:

- a. A bill of exchange is an unconditional order while a promissory note is an unconditional promise;
- b. A bill of exchange unlike a promissory note is required by law to be drawn in sets;
- c. A bill of exchange has three primary parties to it: to wit' the drawer, the drawee and the payee while a promissory note has only two, the maker and the payee;
- d. Unlike a bill of exchange, the acceptance of a promissory note is neither necessary nor required by law. Inferentially, presentment for acceptance is not required for a promissory note unlike a bill;
- e. In a bill of exchange, it is the drawee who is the principal debtor that is primarily responsible to the payee on the instrument while in a promissory note it is the drawer or maker who is the principle debtor;
- f. Unlike in a bill of exchange, a foreign note does not have to be protested on dishonour.

There are also some minor points that need to be borne in mind when considering the nature and character of a promissory note. First, an instrument in the form of a note payable to the maker's order is not a promissory note with the meaning of the definition unless and until it has been endorsed by the maker. This is clearly stated in subsection (2) of the said section 85. The rationale for this provision is that a promise to pay to the order of the maker is not a promise "made by one person to another" as stated in the provision since in effect, the maker has only made a promise to himself. As was explained by Brown, J. in *Hooper v. Williams*,²⁵⁵ When the maker of a note promises to pay to his own order, it is the same as if he said, "I will pay to the person I order". Then the effect of his

²⁵⁴ ALR [1955] Trav. Co. 141.

²⁵⁵ [1848] 154 ER 385, at p.387.

endorsement is to order payment to bearer, and so the instrument becomes in terms a promissory note payable to bearer.

Mark, B. expatiating further on the issue said:²⁵⁶

“No right to sue could exist in anyone, in the case of a note payable to the maker’s order, until the order is made in the share of an endorsement: until that endorsement was made, it was an imperfect instrument, and in truth not a promissory note at all.”

The second point to mention is stated in subsection (3) of the said section 85. This provides that “a note is not invalid by reason only that dispose thereof”. This provision gave effect to the decision of the English Kings Bench Division in *Wise v. Charton*.²⁵⁷ In that case, the instrument on which the action was brought was in form as follows:

On demand, I promise to pay to Mr. J.O. Johnson or order, the sum of J120, with lawful interest for the same, for value received; and I have deposited in his hands title deeds to lands purchased from the devisee, W. Topolis, as a collateral security for the same.

It was held that nevertheless the instrument was a promissory note containing a distinct and absolute promise and that what follows the promise was a mere memorandum that some title deed where deposited as collateral security.

The third point to mention is stated in section 86, which states that a promissory notes is inchoate and incomplete until it is delivered to the payee or bearer. The provision gave effect to the decision of the English Court of Exchequer in *Chapman v. Cottrel*.²⁵⁸ In that case, the defendant, a British subject resident in Florence, France, signed two promissory notes there, as joint and several makers with his brother in London, to whom he sent them by post. His brother also signed them, and delivered them in London to the payee. It was held that the cause of action arose when the notes were delivered to the payee in London. The essence of this provision and the decision is that while the written instrument remains with the maker, he has the best evidence of proof of the promise and the payee will be unable on his own to prove his entitlement or the liability of the maker.

Finally, there are situations where an instrument might not have strictly complied with the conditions contained in section 86(1) but the holder has been given the option of treating the instrument as a note or bill. This is provided in section 5(2) of the Act.

²⁵⁶ Ibid, at p.388.

²⁵⁷ [1836] 6 LJKB 80.

²⁵⁸ [1865] 34 LJ EXq. 186.

The Form of Promissory Note

Generally, there is no particular form of words required for the making of promissory notes. In practice however, words more familiar in the making of bills of exchange are often used. What is more important though is that the requisite intention to make a note or to pay money is clear and that this intention is expressed in the promise. In this regard, it has been observed that “it is sufficient if the substance of the note is a promise to pay money.”²⁵⁹

In *Sibree v. Tripp*,²⁶⁰ the plaintiff deposited with the defendant the sum of fifty pounds (£50) for speculation on foreign stock. The defendant, in consequence of this signed the following memorandum: “Bristol, August 14th., 1843 memorandum. Mr. S. has this day deposited with me £500, on the sale of 10, 30, 31 per cent Spanish to be returned on demand.” It was held that this memorandum did not constitute a valid promissory note. Pollock, C.B. observed that:²⁶¹

“It is difficult to lay down a rule which shall be applicable in all cases; but it seems to me that a promissory note...means something which the parties intend to be a promissory note. We cannot suppose that the legislature intend to prevent parties from making written relating to the payment of money, other than bills and notes...”

Although precise form of words is not required to constitute a promissory note, it has been opined that “it ought to have all the essentials of a contract”.²⁶² Sometimes, the word undertake is substituted for the word promise in constituting a note. Thus in *Re General Estates Co., Ex Parte City Bank*,²⁶³ the directors of a company gave to H., for value, a debenture stamped as a deed and by which the company “undertake to pay to the order of J., on July 1 1867, £1000, with interest half-yearly, on presentation of the annexed interest warrants”. Page-Wood L.J. held that apart from the “immaterial substitution” of undertake for promise, the document was a simple and ordinary form of a promissory note. Indeed in *Re Imperial Land Company of Marseilles Ltd*,²⁶⁴ Mallin L.C. opined that “any instrument from which the court can collect an additional contract by one person to pay another is a promissory note.”²⁶⁵

²⁵⁹ See *Mourice v. Lee* [1825] 88 ER 258, at p.259, per Raymond CJ.

²⁶⁰ [1846] 153 ER 745.

²⁶¹ *Ibid*, at p.748.

²⁶² See *Brown v. De Winston* [1848] 136 ER 1281, at p. 1288, as per.

²⁶³ [1868] 18 LTR 895.

²⁶⁴ [1870] 23 LTR 515e.

²⁶⁵ *Ibid*, at p.517.

In *Nwokorie v. Nwaneri & Ors.*²⁶⁶ The instrument in question had three constituent parts, the first introduced the parties involved and stated in part the transaction which gave rise to the making of the instrument. The middle part contained the unconditional promise to pay the sum of money mentioned therein while the final part referred to the subject matter which gave rise to the transaction. In his decision, Nkemen, J. of the High Court of Former Eastern Nigeria held that:

- a. In making a promissory note, it is not necessary to adhere to any form of words as long as the conditions of the definitions in [the Act] are observed, and
- b. A promissory note is not invalid merely because the instrument contains a recital of the transaction that give rise to its issue.

Parties and Their Liabilities

The primary parties to a promissory note are the maker (or makers) and the payee. There is no acceptor of a promissory note since the instrument does not require acceptance. Any other person can become a party thereto only by endorsement, thus giving that person, *prima facie*, only secondary rights and liabilities. However, by virtue of section 91(2) of the Act, the maker of a note is deemed to correspond with the acceptor of a bill and the first endorser with the drawer of an accepted bill payable to drawer's order. We may examine the positions of these primary and secondary parties to a note.

a. *The Maker of a Note*

The maker of a note who may sometimes be referred to as the promisor is the party primarily liable on the note. He is the principal debtor and as already mentioned, *supra*, his liabilities correspond with those of the acceptor of a bill. According to section 90 of the Act, the maker of a note by making it,

- (i) Engages that he will pay it according to the terms of its tenor;
- (ii) Is prohibited from denying to a holder in due course the existence of the payee and his then capacity to endorse.

In the light of these stipulations, it becomes necessary to compare the liabilities of the maker with those of the acceptor of a bill. First, while the maker of a note engages to pay it according to its tenor, the acceptor of a bill engages to pay it according to the tenor of his acceptance. The significant difference here lies in the fact that the tenor of an instrument is not necessarily the same as that of the acceptance of the instrument. The acceptor has the discretion to accept an instrument either entirely according to its tenor or to modify it usually by limiting

²⁶⁶ [1967] NCLR 227.

his own liability by the tenor of his acceptance. Secondly, unlike the acceptor of a bill, the Act does not expressly preclude the maker of a note from questioning the genuineness or validity of an endorsement. This can be explained by the fact that unlike the acceptor of a bill it is the maker who made, signed and issued the note and the acceptor of a bill usually would have accepted after some endorsement. It is pertinent to point out here that the liability of the maker to pay according to the tenor of his note is absolute and without presentment except as provided in section 89(1). This states in part that where a note is in body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable.

A promissory note may be made and signed by two or more persons as makers. Section 87(1) of the Act acknowledges this while stating that its effect is that “they may be liable thereon jointly, or jointly and severally, according to its tenor”. Sub-section (2) states further that “where a note runs, ‘I promise to pay’ and is signed by two or more persons it is deemed to be their jointly or jointly and severally liable on a note, if the note purports to make the makers liable in the alternative, the note is void for uncertainty of the parties. In *Ferris v. Bond*,²⁶⁷ a note to pay a certain sum of money was signed “John Corner, or else Henry Bond” and an action against Henry Bond alone failed. It was held in part that the instrument did not contain an absolute undertaking on the part of Mr. Bond to pay and that it was conditional only on the part of the defendant, for he undertook to pay only in the event of Mr. Corner not paying.

When two or more persons become liable jointly as makers of a note any judgement against one of them, even though unsatisfied, bars proceedings against the other or others.²⁶⁸ The reason lies in the general rule that joint liability gives rise to only one cause of action. Any of the joint makers can therefore be sued for the whole sum payable but he can apply to the court for the other or others to be joined as defendants or otherwise claim to be entitled to contribution from them. On the other hand if liability is several, there is a cause of action against each of the joint makers. In that case any judgement against any of them does not bar or extinguish proceedings against the other or others.

Joint liability may also be created where a person signs a note on behalf of himself and another or others. In such a case, it is pertinent to establish the actual or ostensible authority of the person so signing. Joint liability may also be created where a person signs not as a maker but as guarantor signs the note below the maker’s signature, he renders himself jointly liable. He takes a primary responsibility on the note, but as guarantor signs the note below a primary

²⁶⁷ [1821] 106 ER 1085.

²⁶⁸ See *Kendall v. Hamilton* [1879] App. Cas. 504.

responsibility on the note, but as regards himself and the maker, he stands as guarantor, this renders him liable to the promise without the original promisor. As against the latter however, he is entitled to claim indemnity. On the other hand, if the whole sum is recovered from the original promisor, he is not entitled to contribution from the guarantor.

b. *The Payee*

This is the principal creditor to whom the principal debtor, the maker or makers, made the promise to pay the sum of money mentioned in the note. As stated above in connection with section 91(1) of the Act, his rights and obligations are similar to those of the payee of a bill of exchange. We therefore may recall our discussions on the latter.²⁶⁹

c. *The Endorser*

By virtue of section 91(2) of the Act, the first endorser of a note corresponds with the drawer of an accepted bill payable to drawer's order. The essence of this that the first endorser of a note incurs identical liability as the drawer of an accepted bill. The special mention of a bill payable to the drawer's order is meant to provide a close analogy since the drawer of such a bill will invariably be its first endorser when it is negotiated. In the light of this, the liability of the first endorser of a note, as with that of the drawer of a bill, is governed by section 55(1) of the Act. According to this as thus amended, the first endorser of a note by his endorsement engages to pay the note according to its tenor and that if the note is dishonoured he will pay any subsequent holder or endorser who is compelled to pay.

The liability of a subsequent endorser of a note is *pari pasu* governed by subsection (2) of the said section 55. In that regard a person who signs a note as endorser, not being the first endorser, engages that he will pay it according to the tenor of his endorsement and that if it is dishonoured, he will pay the promise or any subsequent endorser or holder who has been compelled to pay it. He is precluded from denying to a holder or subsequent endorser that the note when he endorsed it was valid and that he had no good title to it. He is further precluded from denying to the holder in due course of the note the genuineness or regularity of the maker's or makers' signature and all previous endorsements.²⁷⁰

²⁶⁹ See Chapter 3.

²⁷⁰ See Chapter 3.

Payment of Promissory Notes

The payment of a note like that of a bill has the consequence of discharging the note and with it all parties that are liable in respect thereof. However, where the payment was made by an endorser, the payer may have recourse against the maker or makers or another endorser. This will primarily depend on the liability of these other maker of a note liable. According to section 89(1) of the Act, presentment for payment is not necessary in order to render the maker liable except where the note is in the body of it made payable at a particular place. In that case, the note must be presented for payment at the particular place.

Under section 89(1) and (3) of the Act, where a note in the body specifies that it is payable in a particular place, presentment at that particular place is *prima facie* necessary in order to render the maker an endorser liable respectively. This may however be waved by such maker or endorser resulting in a plaintiff succeeding in an action without establishing the presentment of the instrument.²⁷¹ Perhaps more important is the meaning of *in the body of it within* the provision of the sub-section. It has been variously held that an instruction as to the place of payment written in the corner,²⁷² or across the face,²⁷³ or at the foot,²⁷⁴ of the note is not in the body of the note within the meaning of the sub-section. In *Re British Trade Corporation*,²⁷⁵ the place at which the relevant notes was made payable was written at the bottom of the document. The English Court of Appeal reviewed the older cases on the issue and held that in the instant case the instruction was written in the body of the note. Lord Hanworth, M.R. expatiating on this observed as follows:²⁷⁶

You may have some additional matter or a memorandum added to the note. But if it is to be in the body of the note, it must be a part of the actual terms of the contract made by the maker of it.

According to sub-section (2) of the said section 89, as modified by sub-section (3), presentment is necessary in order to render an endorser of a note liable. This is because an endorser stands in the position of a surety to the maker and all previous endorsers.²⁷⁷ However, this is qualified by the provision of section 88(1) which states that when a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement. It is further provided that if this is not so presented the endorser

²⁷¹ See *Joselyne v. Roberts* [1908] 2 KB 349, at p.351, per Channell, J.

²⁷² See *Price v. Mitchel* [1815] Camp. 2200.

²⁷³ See *Stevenson v. Brown* [1901-2] 18 LTR 268.

²⁷⁴ See *Exon v. Russel* [1816] 105 ER 921

²⁷⁵ [1932] 147 LT 46.

²⁷⁶ *Ibid*, at p. 47.

²⁷⁷ See *Chartered Mercantile Bank of India, London & China v. Dickson* [1871] LR SPC 574, at p.590.

will be discharged. Under sub-section (2) of the same section, the meaning of a reasonable time for this purpose is the same as with a bill of exchange. Under sub-section (3), when a bill payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects in title of which he had no notice, by reason that it appears that a reasonable time for presenting for payment has passed since its issue.

Negotiation and Discharge of Promissory Notes

Promissory notes are negotiated and discharged in the same manner as ordinary bill of exchange. This follows from the provisions of section 91(1) of the Act, as already mentioned. We may recall our previous discussions on these and in that regard.²⁷⁸

Special National Promissory Notes

Two special forms of promissory notes require our consideration here. The first is the national currency or bank note while the other concerns those issued under the Government Promissory Note Ordinance of 1960.²⁷⁹

a. *Nigerian Bank Note*. As already mentioned, the issue of the national currency or the bank note in Nigeria is the exclusive reserve of the C.B.N.²⁸⁰ section 17 of the Central Bank of Nigeria Decree, *supra*, now provides in part that:

The bank shall have the sole right of issuing currency notes...throughout Nigeria and neither the federal government or any state government or any local government nor other person shall issue currency note, bank notes...or any documents or tokens which are likely to pass as legal tender.

The bank note is a special promissory note because although the C.B.N. is its maker, its liabilities thereon do not coincide with those of the maker of an ordinary promissory note or the acceptor of an ordinary bill of exchange. This is because section 20(3) of the decree gives the C.B.N. authority if directed to do so by the President and after giving reasonable notice in that behalf to call in any notes on payment of its face value, by virtue of section 22 of the decree, the C.B.N. has absolute discretion to decide whether or not to refund the value of any lost, stolen or damaged notes. It should be pointed out also that by virtue of section 91(1) of the Act, the law relating to transfer by delivery of a bill of exchange also applies to the transfer of a bank note. In consequence, a transferor other than the C.B.N. should have been taken to have warranted to his or immediate transferee

²⁷⁸ See Chapter 8.3 and 8.7, respectively, above.

²⁷⁹ No. 6 of 1960.

²⁸⁰ See Chapter 2.2.1.

for value that the note is genuine and that if it turns out to be the contrary, he will compensate the transferee.

b. *Government Promissory Note*: this is another special form of promissory note issued under section 3 of the Ordinance No. 6 of 1960. Under the section, the Minister of Finance was empowered to issue securities in the form of government promissory note for the purpose of raising loans from governments of other countries or corporate bodies, under section 6(1) of the ordinance, every note so issued shall bear the signature of the Minister and of the Accountant-General of the Federation for and on behalf of.

On such signature, the government of the federation become mandated to pay the principal sum mentioned in the note and the interest thereon in accordance with the provisions of the ordinance or in pursuance of any option for redemption reserved to the Minister under each note.

Under section 7(1) of the ordinance, every such note shall specify whether or not it is transferable and if so the extent to which and the manner in which it may be transferred. Under sub-section (2), it is further provided that notwithstanding anything in the Bill of Exchange Ordinance, such notes shall not be transferable except to the extent and manner specified in the note. The ordinance, *inter alia*, made further and special provisions in respect of payment of the principal sum and interest (section 9); cessation of liability to pay interest (section 19); place of payment (section 11); and discharge of liability (section 20).

KEY NOTES ON NEGOTIABILITY

Requirement of Negotiability

The following conditions must have been fully fulfilled by the transferee before an instrument can be a negotiable instrument in his hands and failure to fulfil any of the conditions will render negotiability void:

- 1) The transfer must be for value.
- 2) There must be no evidence on its face to destroy negotiability (e.g.): “not negotiable”, “A/C Payee Only”.
- 3) The bill must be complete and regular on the face of it at the time of transfer.
- 4) Transfer must be before the instrument is overdue.
- 5) Transferee must act in good faith.
- 6) Recognised instrument, i.e. generally recognised by law and custom.

b) Benefits of Negotiability

- 1) It allows a transferee who has met all the conditions of negotiability to have a title superior to the title of the transferor.

- 2) The transferee can sue in his own name, any person liable on the bill i.e. any person whose signature appears on it and this is known as right of recourse.
- 3) Notice needs not be given to the person liable to pay the bill in the holder's title.
- 4) There is ease of transfer of title.

c) Assignment, Negotiability and Transferability

The above three words have in many cases been used inter-changeably especially in respect to change of ownership but they are not the same in meaning.

Transferability and Negotiability are very close in that all instruments whose ownership can be passed freely from one person to another, either by delivery alone or by endorsement and delivery, without the need to give notice to the party liable on them, are said to be transferable instruments or instruments that possess transferability. By definition therefore, all negotiable instrument must, as a necessary pre-requisite, be transferable and any inscription which attempts to restrict transferability like "Account Payee Only" crossing or restrictive endorsement will in addition to their original intention destroy negotiability. However, not all transferable instruments are negotiable. A bill of lading, for example is transferable in the manner explained above. So also is a postal order but in both cases, the transferee cannot have a title superior to the title of the transferor. They are therefore not negotiable. Negotiability is transferability plus the possibility that the transferee can have a title superior to the transferor's.

On the other hand, assignment is applicable to instruments whose delivery alone does not constitute a valid change of ownership. The change of ownership has to be evidenced by a separate document – usually deed of assignment or transfer form. Mere delivery of share certificate does not constitute a change of ownership until a share transfer form has been completed and duly delivered to the registrar of company involved and registered.

Chapter 13

Banking Malpractices

Introduction

Three distinct categories of banking malpractices will be considered in this chapter. These will include malpractices by bank employees, those by outsiders (non-bank employees), and those committed by banks themselves, as corporate bodies.

Banking malpractices, (by whatever name called) have become, an endemic component of Nigeria's banking and financial system. The *modus operandi* though discreet, are discernible, and the magnitude only imaginable. All tiers of government (local, state, and federal), individuals and corporate bodies are all victims but the level of damage done is usually, both in extent and impact, diffuse and remote.

Offences within any banking institution are by and large connected with money. Whatever may be the motivation, and/or style, banking fraud or malpractice is an action or conduct by which the perpetrator aspires to gain a rather dishonest advantage over another in pecuniary terms. It may take the form of forgery, and in this regard, documents, cheques, drafts, currency notes, bills of exchange, bills of lading, various other negotiable and quasi-negotiable instruments like promissory notes, treasury receipts, and the likes, are good examples of items are usually forged.

Malpractices by Bank Staff

Regular Malpractices

Banking malpractices perpetrated by bank employees consisted largely of, but by no means exclusive of the falsification of entries of accounts of customers with a view to siphoning the excess proceeds or shortfalls; forgeries of signatures of accounts, deliberate distortion of records of loans and other transactions, cash theft by bank officials, more especially those in charge of cash, and in some cases even those in the top management levels are not left out. The major sources of staff malpractices are vast and varied, as the innate ingenuity of elite criminals often respond to any given situation with new techniques. For instance, the introduction of computerized banking has brought with it computer related crimes associated with computer virus, and dishonest programming. Bank staffs

also engage in the following malpractices: forged cheques, forged letters of credit, forged mails and telex transfers, suppression of cash, foreign exchange funds, unauthorized printing of bank stationery, unauthorized carving of bank rubber stamps, double pledging, wrongful clearing of cheques, issue of cheque books, and some forms of counterfeiting.

Cash Frauds

There are several methods of cash malpractices that can be engaged in by the bank staff. From outright cash theft from unsuspecting cashiers by their colleagues, to suppression of cash by cashiers themselves. Managerial theft may take the form of removing cash from strong rooms or replacing strong room money with counterfeit currency notes. Among these various forms of cash frauds, suppression of, and subsequent conversion of cash lodgments by cashiers rank highest. In the case of *Aeroflot (Soviet Airlines) v. United Bank for Africa*,¹ an officer of the appellant airline, deposited money in the airline's account with the Respondent bank, and had a properly filled and stamped bank teller issued to him. The teller, in ordinary bank practice, when stamped and signed by the receiving cashier, evidences receipt by the bank of such lodgment. So, in the case, the customer believed that proper acknowledgment of deposit was made, when the cashier issued him with a properly filled-in and stamped teller for the amount deposited. When later the airline's statement of account from the bank showed an amount less than what it ought to be, the airline customer complained. There was no record of such deposit in the bank's books, but the teller was properly filled-in, and stamped, bearing testimony to the deposit. It was later discovered that the "Cashier Stamp" used on the teller had earlier been declared missing in the bank, and subsequently replaced. Apparently, therefore, the "missing" stamp was stolen by the cashier, and was being used by him to stamp tellers which gave the impression of genuine transactions, but without him recording his receipts in the bank's books. The above case, in which the customer succeeded against the bank, only represents a tip of the iceberg of cash thefts committed by bank staff.

Professor Adeyemi² describes as the most baneful of these acts of theft, fraudulent transfers now considerably aided by use of telex and computers. According to the learned Professor, this practice usually involves collusion by employees of at least two banks. The illustration goes like this: A tested telex goes out from Bank A, requesting Bank B to transfer a certain amount of money from a customer X's account in Bank B, on the purported authority of customer X.

¹ 1986 3 NWLR 188

² Adeyemi, Adedokun, "Malpractices in the Banking Industry". Being a paper presented at the seminar on banking and other financial malpractices, held at the Institute of International Affairs, Victoria Island, Lagos 24-26 April, 1989.

everything about the procedures of the exchanges between the two banks is regular, excepting the fact that customer X never requested for the transfer of the money to Bank A in the first place. Oftentimes, a forged request form or letter is prepared to authenticate the basis for the action in Bank A. Bank B then responds eventually by effecting the transfer of the requested amount to Bank A. The culprit thereafter effects a fake payment to customer X, through the clearance of a forged cheque or through the transfer of funds to yet another bank, Bank C, again supported by false documentation. The money is then taken out from Bank C, again supported by false documentation. The money is then taken out from Bank C. on the completion of the operation, the documents are then made to disappear from the coffers of Bank A, and, possibly also from those of one or both of Banks B and C. An actual, usually impecunious, "Customer X", or an outsider posing as customer X, may be involved in the fraudulent transfer operations.

The above illustration by the learned Professor, thus, reveals a mind-boggling, complex, and well organized fraud network which if undetected is capable of siphoning money running into millions of naira from victim banks, and customers. Other forms of cash frauds too numerous to describe, are constantly being practiced by bank staff, but which are often not reported or publicized because banks do not ever wish to wash their dirty linens in the public for fear of the consequences to them, and their business of such public disclosures.

Forged Cheques

Forgery is the making, or alteration of a writing to the prejudice of another man's right, with the aim of conferring on the forger, some benefit or right or title to which he is ordinarily not entitled. It is not possible to defraud a bank or to successfully carry out a forgery without the active participation of, or passive connivance of bank staff. Forgery may involve the illegal and unauthorized adjustment of the amount of a cheque, or the signature of the account owner or even the alteration of the date on an otherwise stale cheque or other negotiable instrument. These occur mainly on corporate accounts, and are invariably committed by insiders having access to the company's cheque book, in collusion with fraudulent staff of drawee banks.

The provisions of section 70 and 73 of the Companies and Allied Matters Act,³ may not help matters in this regard. Under these sections, when read together, a forgery by an officer or agent of a company binds the company where there is no collusion between the company's officer or agent and third party. In the case of a straight arrangement between a company's account, such a fraud

³ Companies and Allied Matters Act Cap 59 Laws of the Federation of Nigeria, 1990.

may well bind the company. In this kind of scenario, no third party is involved. In *Nigeria Advertising Service Limited v. United Bank for Africa Limited*,⁴ the defendant, which was at all times the plaintiff's banker, paid out the cheques belonging to the plaintiff which had been forged by a messenger in the plaintiff's employment. It debited its account with the value of the cheques, and that the amount was due and owing. The plaintiffs further contended that the defendant had wrongfully paid out the cheques without the plaintiff's authority, and was, therefore, disentitled from debiting its account. It was held that the defendant had wrongfully debited the plaintiff's account with the amount of the cheques.

As pointed out elsewhere in this work, it is doubtful whether the same verdict would be reached today in view of sections 70 and 73 of the verdict would be reached today in view of section 70 and 73 of the Companies and Allied Matters Act. Both sections embody the view expressed in the case of *Lloyd v. Grace Smith*⁵ where the fraud was committed by a solicitor's clerk for his own benefit in the course of his employment without his employer's knowledge. It was held that:

As the fraud was committed in the course of the clerk's employment and not outside the scope of his authority the solicitor was liable to the client although he was innocent of the fraud and the fraud was committed not for his benefit, but for the benefit of the clerk.⁶

In the light of section 70 and 73 of the Companies and Allied Matters Act which embody the same view as seen above, it is submitted that as far as corporate bodies were concerned, if an officer or agent commits fraud using forged cheques, while acting or purporting to act in the course of the company's business, the company is bound. This, of course, presupposes that his is authorised, or held out as authorised to transact business on account of his employer, or principal. In the circumstances the employer or principal though innocent of the fraud, is liable for the fraud of the officer, or agent whether seem from all this, that bank staff acted in collusion with corporate officers or agents can clear cheques bearing forged signatures and this will decide under the provisions of section 70 and 73 of the Companies and Allied Matters Act. It will, however, be interesting to see what views the courts will take in the event of a case coming before them. For now, the above submissions remain largely academic.

Loans Fraud

Within the operations of specialized institutions like the industrial banks, agricultural and cooperatives banks, as well as mortgage banks, the area most

⁴ (1968) 1 ALR Comm. 6

⁵ (1911-13) ALL E.R. Rep. 51

⁶ Ibid., at pg. 57

vulnerable to fraud and forgeries are the procedures for granting, recording, and monitoring of loans and advances to customers. That loans and advances granted by banks soon acquired the status of “bad and doubtful debts” is not altogether accidental. Loans granted, sometimes get bad right from the onset, that is to say, right before disbursement. This is possible through the manipulations of fraudulent bank staff who sometimes, with the active and guided co-operation of burrowers, create, and/or exploit loopholes. Procedural loopholes may thus be exploited to the banks detriment in order that such banks staff may secure for themselves individuals and private gains.

Loan fraud may take the form of outright grants to unintended and unqualified borrowers who, aided and abetted by senior staff that may be relatives, friends, and even business partners, make false declarations to mislead the bank. These false declarations may be made outright with the intention to defraud. Some other frauds associated with the processing of loans and advances are “legal” difficulties built into the enforcement of bank’s rights in relation to perfection, enforcement and realization of securities, such as rights under mortgages. These rights may suffer undue delays or other manipulations which eventually frustrate the bank’s title to mortgaged property.

An illustration of the effect of legal difficulties is provided by the case of *Chief Edu v. National Bank of Nigeria Limited and West Africa Travel Agency Limited*.⁷ In that case, the respondent bank, as plaintiffs, brought an action at the High Court to recover a sum of money owed to them by the first appellant who along with another were the first and second defendants respectively. The second defendants, the principal debtors, admitted liability, but the first defendant, now the appellant, as the alleged guarantor, denied the bank’s claim on the ground that the guarantee expressly limited his liability to certain properties itemized in the schedule, and he was not personally liable in any way. The trial judge found in favour of the bank and the first defendant appealed to the Supreme Court. After a review of English cases on the point, the Supreme Court held that the appellant guarantor was not personally liable on his guarantee. Accordingly, he was absolved after his appeal was allowed, and the bank lost on the transaction.

The verdict of the apex court was informed by a legal principle. The principle is that where a guarantor pledged his credit for the repayment of a loan by depositing his title deeds. With a promise to execute mortgage in favour of the bank, the suretyship thus given, does not involve personal liability of the guarantor. The remedies available to the bank must be as contained in the memorandum signed by the guarantor. If it does not involve his personal liability,

⁷ (1971) 1 All N.L.R. 256

he cannot be made personally liable to repay such loan. The point to be made here is that such legal loopholes are sometimes exploited by senior bank staff to defraud banks in collusion with outsiders from whom they may knowingly accept over-value security. When such an over-value security proves inadequate as against the loan granted, the bank cannot recover from the guarantor who takes no personal liability.

Others

There are numerous other malpractices engaged in by bank staff. These include suppression of cheques in clearing, interception of telex messages meant for transfer of funds under international commercial, and other transaction with the object of diverting the proceeds into their own foreign accounts. Very serious categories of staff only can engage in this form of malpractice. Finally, there is the ever present case of granting unauthorized overdrafts, and falsification of records to hoodwink inspectors and auditors. The case of *Akwule v. R.*⁸ discussed in the second chapter provided a good illustration of unauthorized overdraft. In this case, the appellant, a manager of the Fagge Ta Kudu of the Bank of West Africa, in Kano, was alleged to have given out large sums of bank money to his co-accused. In an effort aimed at defrauding the bank, he caused false entries to be made in the bank's ledgers so as to conceal the truth from bank inspectors. He was convicted of criminal breach of trust. Although on appeal, the conviction was set aside on the purely technical ground of him not being a "banker" as provided for under section 315 of the Penal Code, yet the case provided a clear picture of bank fraud involving bank staff.

Malpractices by Non-Bank Staff

It is not an easy thing for an outsider to defraud a bank without the active or passive connivance of an insider or insiders within the bank. Malpractices against banks, therefore, are largely such as may be classified easily as malpractices by bank staff. Notwithstanding, there is a distinction. A majority of malpractices by non-bank staff are aimed at merely using the bank's name as a cover for external frauds. These frauds, may not result in direct financial losses, but impinge upon the good reputation of Nigerian banks in view of their damaging consequences. For instance, it is common knowledge that confidence tricksters, fake businessmen and women, as well as port agents, produce forged letters of credits, and spurious bank drafts purportedly issued by Nigerian bank with the aim of receiving large consignments of goods, and other supplies from overseas manufacturers and traders, which are never paid for. Allied with this, is the

⁸ (1971) 1 All N.L.R. R. 256

practice of printing bank stationery, carving bank rubber stamp, and use of fake letter-headed paper. The effect of all these is that when genuine transactions are undertaken, they become suspect. The fear of losing to dupes generates a sense of insecurity in foreign business interests who as a result, are reluctant to do business with Nigeria.

Another area of banking fraud which is now of growing concern has to do with fake tested international telexes, and interception of genuine ones, purporting the authorization of transfer of funds. The effect of this kind of criminal malpractices has certainly been the loss of large sums of monies by the banks and their customers, and above all the engendering of a credibility problem. Presently, large scale computer frauds by outsiders against Nigerian banks, is still quite unknown. There is no wide spread reports of banks having been infiltrated. This may be because the element of computerized banking is, relatively speaking, in its nascent stage in Nigeria. It can thus only be hoped that Nigerian banks will do their utmost to guard against this form of sophisticated malpractices by adopting appropriate measures in this regard. One of such measures is to ensure, for instance, that a computer programmer is not at the same time, the computer operator. Additionally, special internal auditors, inspectors, and senior management personnel should be given adequate specialized training on computers and computer related frauds in order to enhance their ability to detect and control frauds. Appropriate anti-computer fraud legislation may also be passed to ensure that both real and potential criminals do no cause havoc with computers once their use becomes widespread throughout the Nigerian economy.

Finally, the element of corruption which afflicts the larger society has not passed by the banking industry. A retrospect of section 43 of the Banks and Other Financial Institutions Act, is a pointer to the prevalence of this evil within the banking system. That section prohibits any director, manager, commission, employment, service, gratuity, money, property or thing of value for himself or any of his relations. This provision is a reaction to, or to put it the other way, a mere acknowledgement of the existence of a wholesale malpractice by which people influence bank staff. The object of providing bank staff with inducements, whether in cash or kind, is often to procure loans, advances, or credit facility from the bank. It may also be done with the object of securing permission to overdraw an account with the bank, without proper authority or compliance with rules and guidelines for that purpose. Another reason for engaging in such corrupt practices is the desire to have negotiable instruments discounted or to have any other obligation by the bank tampered with, positively or negatively in favour of any person. This may include bringing about sudden disappearance of documents relating to a loan transaction with a view to having it written off as bad debt.

All these represent various shades of malpractices committed within the banking industry by outsiders that is to say, by non-bank staff. However, as pointed out in the course of this discourse, it is not possible in the strictest sense to isolate these practices and have them classified as non-bank staff malpractices. This is because it is not really possible for an outsider to just stroll into a bank and defraud it of money. There is always an element of internal assistance offered, either by way of active or passive connivance by bank staff.

Malpractices by Banks

Circumventing Policy Guidelines

Among the principal kinds of malpractices perpetrated by banks, is the breach of Central Bank policy guidelines. These guidelines may be in relation to credit policy, interest rate policy, foreign exchange, cash reserves, and investment policy among others. Pursuant to its power under section 16 to 22, of the Banks and Other Financial Institutions Act, as well as under section 28, of the Central Bank of Nigeria Act, the Central Bank of Nigeria exercised various forms of control over other banks within the Nigerian banking system through its policy guidelines.

Central Bank credit policy guidelines cover such areas like aggregate credit ceiling, sectoral allocation of commercial and merchant banks loans and advances, structure of merchant bank loans and advances, structure of merchant and commercial banks assets, as well as loans to rural borrower. Other areas include loans to small scale wholly Nigerian owned enterprises, grace periods on loans for agriculture, loans for residential buildings, and reserve requirement. Additional areas that attract guidelines include interest rate policy, capital funds adequacy, bank's equity holding in companies, bank's obligations, and foreign guarantees and currency deposits as collateral for naira loans.

With so many guidelines, and even much more regulations put in place by the Central Bank, merchant and commercial banks more often than not, take steps to evade some of these guidelines with a view to making higher profits. Accounts abound of banks having been blacklisted by the Central Bank for violating foreign exchange guidelines. At the maiden official foreign exchange sale of the year 1994, twenty-two banks were found to have applied for far more foreign currency than their customers demanded. Three banks, for instance, applied for between ninety-five and one hundred and fifteen million dollars when their customers requested for between thirty and forty million dollars. Such excess foreign exchange eventually gets diverted to the parallel market where they are

sold at twice the official rates. The Central Bank then confirmed that such banks may be banned from bidding for foreign exchange for the rest of the year.⁹

That this, and other malpractices such as breach of sectoral allocations by banks are well known to the Central Bank, is reflected in provision for penalties for default, written into Central Bank guidelines issued from time to time. The Central Bank of Nigeria: Credit Policy Guidelines for 1990 Fiscal Year, for instance, has the following penalties stipulated therein:

Commercial and merchant banks which exceed the permissible rate of expansion in total shall deposit an amount equivalent to the excess with the CBN. As usual, such deposits would earn no interest and on-eligible for inclusion in the defaulting banks' specified liquid assets holding for the purpose of calculating the cash reserve and the statutory liquidity ratios. Such deposits shall be lodged on quarterly basis and held by CBN for a minimum of three months, and remain with the Bank for as long as the default lasts.

Further penalties include where a commercial bank's total monthly allocation of its credit to agriculture and small-scale enterprises falls short of the guideline minima of 15 and 20 per cent, respectively, that bank shall be required to deposit the amount of the shortfall with the Central Bank. Similarly, merchant banks are required to deposit shortfalls, with CBN regarding the 10 per cent of aggregate credit allocated to agriculture. The deposits of defaulting banks shall, as usual, neither count as part of the bank's liquid assets nor attract any interest. The hard core of the shortfall collected shall continue to be lent by the CBN to the Nigerian Agricultural and Cooperative Bank (NACB) in respect of agricultural loans and Nigerian Bank for Commercial and Industry (NBCI) in respect of lending to small-scale enterprises at concessional rate of interest for on-lending activities in the respective sectors.¹⁰

Finally, the guidelines provided that, "Fines shall continue as usual, to be imposed on banks and insurance companies which default in rendering statutory and other returns." The nature of penalties provided as seen above, are clear manifestation of the awareness of the existence of malpractices being committed by banks as corporate institutions.

An actual investigation of particular breaches found that in many cases, bank customers are not even aware of what their rights are, let alone that they were being violated by banks. A few illustrations will suffice here.

⁹ *The African Guardian* magazine, Vo. 9, No. 9 March 7, 1994. P. 10

¹⁰ Central Bank of Nigeria; Credit Policy Guidelines for 1990 Fiscal Year (CBN Lagos). 1990 pp. 18-19. In this account of malpractices by banks, the base year of 1900 has been deliberately chosen for two main reasons firstly, to show that such malpractices have been on for decades and therefore not a new phenomenon. Secondly, to illustrate the Central Bank's dynamic approach to this phenomenon as revealed by its review of the guidelines as circumstances demand from time to time.

Interest Rate Policy

Item 9 of the Central Bank credit policy guidelines for the 1990 fiscal year dealt with interest rate policy. Under this policy it was provided that:

“Consistent with current policy, banks shall pay interest on current accounts deposits. The rate of interest, payable shall be subject to negotiable between banks and their customers. Where deposits for special purposes are held for more than seven days, banks shall pay interest on such deposits and the rate of interests shall also be subject for negotiation between the banks and their customers.”¹¹

Research revealed that virtually all banks did their best to avoid paying interest on current accounts. Contrary to the stipulations of the guidelines as seen above, banks did not hold any meetings with their customers to fashion out rates of interest payable on current accounts. The customers, majority of who have not the slightest idea that when they open accounts with banks, and make lodgements, were actually lending the bankers such monies, did not ask any questions. Statements of accounts were not even issued to customers by certain banks. Yet, most of the banks continue to charge their customers commission on turnover.

Still on interest rate policy, the 1990 guidelines provided that:

Banks shall continue to design their passbook in such a way that the following information will be clearly shown when calculating interest yielding on savings deposits: interest rate applied, the amount of savings on which calculation is based and the period for which interest is calculated.¹²

Just as was the case with interest on current accounts, most banks flouted this directive. Till date, most bank's passbooks do not reflect all the details enumerated in the above quoted guidelines provision. Some banks today have even dispensed with the use of passbooks as customers no longer have these issued to them, instead in their place special forms with I.D. cards and passports photographs attached are now the vogue for operating accounts hitherto having pass books attached to them.

Complaints Desk

Item 1 of the Central Bank guidelines for 1990 also provided for a grievances redress mechanism. Accordingly, the guidelines provided that:

To maintain the confidence of the public in the banking system and

¹¹ Ibid., item 6 pg. 10

¹² Ibid., item (a) (iii), p. 11

thereby enhance banking habit in the economy, the Central Bank shall continue to have a Public Complaints Desk (PCD) in its head office and each of its branch offices in the States Capitals where the public can lodge complaints against their banks. Where cases against any bank are proved, the bank shall be made to make necessary amendments and pay penalties as may be stipulated.¹³

The reason behind this stipulation is that since the Central Bank does not deal directly with the general public in the same way as does commercial banks, the banks will educate their customers of these channels of redress available to them. Most bank depositors in Nigeria remain unaware of their rights to complain against their banks to the Central bank, through the mechanism of the Public Complaints Desk of the apex bank. That bank do not as is required of them, notify their customers of this available avenue for redress is not surprising. What is really surprising is that the Central Bank itself should depend on banks to make known an avenue for seeking redress against their own misdeeds. Such an expectation on the part of the apex banks sounds stranger than fiction. It is submitted, that instead of relying on banks to educate their customers, the Public Complaints Desk of the Central Bank, should, as a better course of action, run its own public enlightenment campaign. This measure is feasible give the past success of the Central Bank's public enlightenment campaigns, for instance, during the change-over from one unit of currency to another. In this account of malpractices by banks, the base year of 1990 has been deliberately chosen for two main reasons. Firstly, to show that such malpractices has been on for decades and therefore not a new phenomenon. Secondly, to illustrate the Central Bank's dynamic approach to this phenomenon as revealed by its review of the guidelines as circumstances demand from time to time.

Round Tripping of Funds

This is yet another form of malpractice indulged in by banks. It is a system of practice by which a foreign bank would guarantee a local loan for a local project. This is to say, that a foreign bank guarantees the grant of loans denominated in naira on the security of a foreign guarantee or foreign deposits held abroad or in domiciliary accounts with Nigerian banks. Then, both the Nigerian and foreign bank will team up to defraud. Ordinarily, the local project to be financed by the local naira loan will be selected. The Nigerian bank grants the local naira. Import of project related requirements in undertaken, and thereafter the project is

¹³ Ibid., item 14, pp. 13-14

abandoned. Once the failure of the project is notified, the Nigerian bank will request its collaborator banks abroad to remit its guaranteed amount of foreign exchange. The foreign exchange remitted, is then sold in the parallel market at high rates by the Nigerian bank. After deducting its profits, the Nigerian bank remits back through local purchase of foreign exchange, its money to the foreign bank. All parties then share the remainder profit in excess of the original sum guaranteed in foreign exchange.

The fraud entailed, is that the so called foreign guarantee does not result in any real foreign investment in Nigeria, but operations to siphon foreign exchange from Nigeria to the foreign banks involved. This practice was thus abolished by the Central Bank through its Monetary Policy Circular No. 23 Amendment No. 3 of April 1989. The apex bank reaffirmed this tough policy approach, in 1990, under the credit guidelines which provided the following penalty:

In line with the Monetary Policy Circular No. 23, Amendment No.3 of April 1989, no commercial and merchant bank or any financial institution shall, in 1990, grant loans denominated in naira on the security of foreign guarantees and/or foreign deposits held abroad and/or in domiciliary accounts with Nigerian banks. Any bank or non-bank financial institution which breaches this directives shall be made to deposit with the Central Bank an amount equivalent to the loan principal so granted. Such deposits which shall be non-interest bearing, and in the case of banks, non-eligible for inclusion in the banks' specified liquid assets for the purpose of calculating the statutory liquidity ratio, shall remain with the CBN for as long as the loan remains on the bank's loan portfolio but shall, in any event, be held for a period not less than three months.¹⁴

What has been highlighted in the foregoing accounts represents glaring cases, this is more so, as can be seen from the fact that appropriate regulatory, and supervisory responses are immediately undertaken by the central Bank, pursuant to its regulatory powers over other banks.

Impacts of Banking Malpractices on the National Economy

Banking malpractices, even where they result in pecuniary gains for their perpetrators, are usually negative in their overall effect on the national life of any

¹⁴ Ibid., item 11 pp. 12-13

nation. They affect the depositors, the other creditors of the banks, the banks themselves, and the national economy at largely.

Banking malpractices is no more than an arm of the larger evil often referred to as economic or white-collar crimes. The victims of banking malpractices cut across every segment of society. From the small peasant savings account holder, to the corporate customer, and governments at all levels; local, state and federal, all are victims. Though the victimization is usually both in extend and impact, diffuse and remote; the cost in various respects is unquantifiable.

Beginning with depositors and other users of bank services, the immediate effect is felt when persistent stealing, swindles, and other aggravated frauds result in bank failures, and collapse. The “multiplier effect” of bank failure then inevitably manifests itself in the form of ruined business, loss of life savings, breach of contractual engagement, loss of valuables, loss of jobs, and the consequential social traumas as well as various concomitant unfulfilled hopes and aspirations they engender.

On the part of banks, huge losses may occur which threaten the profitability of, and the safety of investors capital and business endeavours. Reduced returns on investment in banking may lead to flight of capital into other sectors, should shareholders and promoters lose confidence in the banking industry. In the final scenario, banks beset with fraud and sundry malpractices simply collapse under the weight of these evils. The fate of the National Bank of Nigeria, the nation’s pioneer indigenous bank, is a visible manifestation, and sad reminder of this malaise.

Conclusively, the impact of banking malpractices on the economy at large can be disastrous. The present state of human misery prevalent in Nigeria, which is a direct consequence of its economic failure, can in part be attributed to bank troubles. When banking malpractices come to a head, there is a general loss of confidence in the use of negotiable instruments as means of settling contractual and other obligations. The resultant loss of faith in the banking system engenders a slow-down of the local economy and suspicion abroad in international commercial and economic circles. Letters of credit, bank drafts, bills of exchange, and other instruments of international commerce emanating from local banks would be routinely suspected abroad as being fake.

Banking malpractices also result in negative economic growth when projects have to be abandoned on account of lack of funds which may have been siphoned abroad through collaboration with foreign interest. Poor economic performance result in poverty and misery as the economy is unable to cope with the demands for jobs, production and consumption of goods and services. Nigeria’s current economic woes, may, without doubt be said to owe in part, to the banking

malpractices of a by-gone era, when spurious foreign debts, and inflated import bills were incurred for goods and services that were never rendered to the nation. Sadly enough, all these unholy spoliation took place with the active connivance, and in some cases, the passive connivance of Nigerian banks.

Legal and Institutional Framework for Combating Banking Malpractices

Legal framework

Beginning with the Bank Ordinance, 1952, statutory enactments such as the various Banking Acts of 1958, 1969, and the Banks and Other Financial Institutions Act, 1991, have always contained the bulk of legal rules that regulate banking business in Nigeria. The focus here, is, however, centred on two additional pieces of legislation that touch upon the subject of combating banking malpractices in Nigeria. These two laws are not themselves part of the earlier laws enacted in the area of banking. They are, however, relevant legislation on the combat of malpractices in the banking sector. They are, therefore, ancillary to, and complementary of other major laws earlier discussed in the preceding chapters, the two laws are the Bank Employees, Etc. (Declaration of Assets) Act and the Dishonoured Cheques (Offences) Act.

Bank Employees, Etc. (Declaration of Assets) Act

Faced with the high incidence of economic crimes, but more particularly banking frauds, the government in 1986, came out with the Bank Employees Etc. (Declaration of Assets) law. The philosophy underlying this law is to ensure that bank staffs live within their means. The inevitable presumption being that whosoever is found to indulge in a life style, or in possession of wealth over and above what may be legitimately ascribed to him, should be investigated for possible involvement in malpractice.

By virtue of section 1(1), of the Act, every employee of a bank should within fourteen days from September 26, 1986 (commencement date of the Act), make a full disclosure of all his assets. New employees were required to comply with this stipulation, within fourteen days of their assuming duty with the bank. For purposes of this requirement, subsection (2) treating a transfer or secondment from one bank to another as being a new employment.

The definition of “employee” or “employee of a bank” contained in section 15, of the Act, includes the Governor, the Chairman and members of the Board, Managing Director, Director, General Manager, Manager, Examiner, Inspector, Controller, Agent, Supervisor, Officer, Clerk, Cashier, Messenger, Cleaner, Driver and any other category of workers of the Central Bank, a bank or other financial

institutions of whatever title or designation, whether general or peculiar to the bank. The section further made it clear, for the avoidance of doubt, that the term “employee” or “employee of a bank” includes a person engaged as part time, casual or temporary worker. Either expression also includes any worker deployed to work in any branch or officer of the bank in or outside Nigeria. By taking in every class of person who may be associated with the bank as its staff, the Act ensured that no one is left out, as indeed anyone may be tempted to commit one malpractice or the other, his category of employment notwithstanding.

Malpractices and contravention committed by bank staff deployed abroad are similarly covered. This is discernable from the Act as it includes in the definition of “employee” or “employee of a bank”, persons deployed to any branch or office in or outside Nigeria. The justification for this, is, that in accordance with the rules of international law, such persons are covered by Nigerian law, either because their acts engender consequences in Nigeria, or because they are nationals of Nigeria. Still by virtue of the principle of international law, any enforcement of the law against such persons can only take place when they come within jurisdiction. Presumably, such persons may face action under the law of the host country if their actions engender consequences in that country.

The full disclosure of assets required under section 1, should be made in Form A, which is a schedule to the Act. The declaration should be executed before, and attested to, by the Registrar of a High Court, the Court of Appeal, or the Supreme Court. Just like the definition of “employee” given in the Act, the definition of “assets” which must be declared under the Act, is quite comprehensive. Accordingly, “assets” included all kinds of property, real and personal, movable and immovable. The generality of the definition notwithstanding, section 15, goes further to describe “assets” as including land, whether developed or underdeveloped, building, factory, workshop, warehouse, ships, aircraft, motor vehicles, furniture, household goods and electronic equipment. Others are farms, stock-in-trade, stocks, shares, debentures, treasury certificates, saving bonds, interests and dividends, the comprehensive nature of this definition leaves nothing to chance or speculation. Whatever, therefore, that can be acquired and owned by man, being material, qualify as assets.

The disclosure of assets by bank employees under the Act is not limited to what the employee owns in his own right. It includes whatever is held by him in trust for other reasons. This does not however include a wife or husband. An employee, is, similarly required to disclose the assets of his wife or husband or children within and outside Nigeria, including those in which he, his wife or husband or children has an interest. By virtue of section 6, the secretary to the

Federal Government is empowered to cause the verification of every initial declaration made, including annual re-declaration required under section 4 of the Act. He may also direct an investigation into the assets and activities of the employee, including the assets and activities of a spouse, child, relative, parent, associate or privy. Professor Eze¹⁵ is of the view that this provision is clearly intended to trace assets which an employee has laundered with the categories of persons mentioned, with the intent of concealing their true ownership on his interest in them, and may be relevant in determining his liability under the revenue law. The learned professor further opined that the law would have further strengthened, if as under the code of conduct any person can allege infraction leading to investigation rather than leave it to the secretary to the Federal Government to set the procedure for investigation in motion.

It is submitted that such a view as that expressed by the learned professor, while it is recognized as being well intended, must be treated with caution for assuming a rather too simplistic approach to the matter. The constitution of Nigeria guarantees the individual's right to property. The mere fact, therefore, that someone stands in a relationship with a bank employee, and which relationship falls within the mentioned categories, does not, *ipso facto*, make him custodian of illegally acquired property. A situation, therefore, where "any person can allege infraction leading to investigation" is fraught with the danger of abuse. Aggrieved persons may wish to settle old scores with any such relation of an employee by whipping up the bogey of him being in custody of a bank employee's ill-gotten assets. The code of conduct to which the learned, professor alluded, has "public officers" in contemplation. A bank employee, strictly speaking does not fit into this category of persons, where he is not in the public service of a local, state, or Federal government. This view is even truer under the present dispensation whereby the privatization of government interest in banks is the vogue.

Fundamentally, it must be noted that the Bank Employee, Etc. (Declaration of Assets) Act, is directly concerned with the malpractices committed by bank employees. It is hardly concerned with persons in the civil service. Accordingly, the general code of conduct guidelines should continue to apply to public servants properly so called, while the banking industry should have its affairs differently regulated, in the interests of economic stability.

Section 4 (4), enacts that the obligation of an employee to make an annual declaration of assets extends to a period of two years after the determination of his employment with the bank. It shall also be his responsibility to ensure that he

¹⁵ Eze, Osita C. "Assets Declaration by Bankers: An Effective Check Against Criminality". Being a paper presented at the seminar on banking and other financial malpractices held at the institute of international affairs, Victoria Island, Lagos 24-26 April, 1989.

makes his declaration, and submits same through the bank whose service he left, within the time stipulated in subsection (1) of the section.

The act created a series of offences. One of such offence is the offence of “unjust enrichment” created under section 7. Accordingly, it is an offence for a bank employee to own assets in excess of his legitimate, known and provable income and assets. Furthermore, for the purposes of computation of assets, or, in determining the assets of an employee, any gift, bequest, donation or fraudulent, fictitious, or artificial transaction made by the employee during the relevant period shall be treated as forming part of his assets. The income and assets of an employee include salaries, allowances, returns on investment, gifts, donation and bequest received by him. The expression “fraudulent fictitious or artificial transaction” used in section 7(4) in relation to the offence of unjust enrichment, refers to a disposal or purchase of asset by an employee of a bank at a price below the market value of such assets. Such disposal or purchase must be in a manner or circumstance that it can be reasonably inferred that the parties could not have been dealing legitimately, or that there might have been some other consideration for the transaction.

In relation to declaration of assets, it was also made an offence, under section 8, for any bank employee to knowingly fail to make full disclosure of his assets and liabilities, knowingly make a declaration that is false, knowing same to be false in part or in whole. Similarly, failure to answer any question contained in the appropriate declaration of assets form under the Act constitutes an offence. Failure, neglect or refusal to make a declaration as required under the Act amounts to an offence punishable by a ten-year jail term.

Fronting is yet another offence created by the Act. Any person who acts as a front for an employee of a bank, or does, or omits to do anything, or acts in a manner likely to defeat the objects of the Act commits an offence punishable by a seven years term of imprisonment, as provided for under section 9. Additionally, the section provides that any person who unlawfully acquires, disposes, operates, owns or retains any assets for or on behalf of any employee of a bank commits an offence for which a seven year jail term shall be imposed upon conviction. In addition to the seven year jail term prescribed for the offence of fronting, section 9(2) adds that the assets in question shall be forfeited to the Federal Government.

A person is deemed to act as a front if he does either of the following: firstly, he accepts a gift, donation, or bequest from an employee of a bank on the understanding, or in circumstances, in which it could be inferred that such a gift, donation, was intended to be held on behalf of, or in trust for or for the use of the employee his spouse, children, parents, relatives, associates or privies. Secondly,

he knowingly enters into a fraudulent, fictitious or artificial transaction with the employee.

Section 10, creates offences relating to the Foreign Exchange Market. By virtue of the section, anything done by any person whether he be a bank employee or not, calculated or prejudice or prejudicial to the effective operation of the Second-Tier Foreign Exchange Market Act,¹⁶ (now simply Foreign Exchange Act-FOREX), is an offence. The Secretary to the Federal Government is empowered, upon his personal satisfaction, to direct that a thorough investigation should be conducted into the assets of such person including, but not limited to the spouse, child, relative, parent, associate or privy. Prejudicial acts include hoarding knowingly or refusing to sell foreign exchange, or doing anything which constitutes an offence under the Foreign Exchange Market Act. An offence related to foreign exchange under the Act, is punishable by a ten year jail term. In addition, any asset found to have been illegitimates acquired shall be forfeited to the Federal Government.

Finally, section 11 deals with offences relating to importation and exportation of goods and products. Under the section, any person who forges, falsifies or alters any banking, customs or shipping document, including but not limited to letter of credit, whether confirmed, or unconfirmed, bill of lading, and invoices relating to the importation of exportation of goods, products or an article whatsoever, shall be guilty of an offence. Any person convicted under the section, shall be punished with a ten-year jail term, and any asset found to have been illegitimately acquired shall be forfeited to the Federal Government.

The power to try an offence under the Act is vested in a Special Tribunal established under the Exchange Control (Anti Sabotage) Act.¹⁷ All the offences enumerated above, though triable under a Special Tribunal, are appealed. In this regard, it may be pointed out that by virtue of section 12(2), the provisions relating to appeals and confirmation contained in the Recovery of Public Property (Special Military Tribunals) Act,¹⁸ apply, *mutatis mutandis*, with provisions of the Act.

Finally, though the Act is essentially directly at bank employees, by virtue of section 13(1), the scope of its application has been extended to other persons. Accordingly, the provisions of the Act apply to the Director, Deputy Director, Assistant Director, Chief Collector, Principal Collector, Collector, and other officer, staff and employee of the Department of Customs and Exercise, in the same manner as they apply to a Chief Executive or an employee of a bank. Section

¹⁶ Cap 405 Laws of the Federation of Nigeria, 1990. (Now Cap F34 LFN, 2004).

¹⁷ Cap 114 Laws of the Federation of Nigeria, 1990. (Omitted in LFN, 2004)

¹⁸ Cap 389 Laws of Federation of Nigeria, 1990. (Now Cap R4 LFN, 2004)

13(2) provides that the President may, by an instrument published in the Federal Gazette, direct that the provisions of the Act be applied to any other person, class of employees, institutions or bodies either in the private or public sector of the Nigerian economy.

Critical Appraisal of the Act

The motives behind the enactment of the law must be applauded as noble and timely, indeed, Professor Eze,¹⁹ described it as “a good piece of legislation, and its intentment is very positive.” Two features of the Act commend it as a law with a mission, and make it difficult to resist Professor Eze’s view of it.

Firstly, the stiff penalties provided for offences under the Act, portray it as an uncompromising weapon for fighting banking frauds. Long jail terms are prescribed in connection with the offence of fronting under section 9. Secondly, a conviction under the Act, attracts an immediate forfeiture of all assets illegitimately acquired. What this means is that no convict under the Act can get away with a fine, only to sit back and enjoy his loot. The additional element of forfeiture signals the futility of engaging in such malpractices, and is, therefore, capable of deterring real and potential fraudsters.

Still on a positive note, the application of the provisions of the Act to the Department of Customs and Excise, and to other persons or institutions as the President may direct, if properly implemented is welcome, and progressive. The commonly held view is that the nation’s Department of Customs and Excise is corrupt and prone to fraud especially in relation to port activities. If, therefore, officials and other staff of the department are made subject to such a law as the Act, then it is a positive development in the national interest.

All said, it is still possible to criticize the Act for its inherent negative features. Foremost in this regard, is the vesting by the Act, of the authority, and power of initiating the investigation of declaration of assets in the Secretary to the Federal Government. The office of the Secretary to the Federal Government is a political one. To vest such powers in an official who ordinarily must be pre-occupied with matters of politics and civil service administration is quite inappropriate. Ordinarily, the Central Bank should have been the proper authority to undertake the task, being the apex bank with supervisory responsibility over other banks. However, since its own staff come under the purview of the Act, and must themselves disclose their own assets which may be subject to investigation, it is submitted that the creation of a special independent organ charged with the responsibility under the law, would be a better alternative.

¹⁹ Eze, Osita, C., *op. cit.*

The Act may be criticized for its limited interpretation of the meaning of “bank”. Section 15 of the Act defined “bank” in the following terms: ‘bank’ includes the Central Bank of Nigeria, commercial banks, merchant banks, acceptance houses, discount houses, financial institutions or any other authorised dealer appointed under the Second-Tier Foreign Exchange Market Act”. The definition clearly omits from its ambit certain present day banking institutions recognised under Nigerian banking law. For instance, section 61, of the Banks and Other Financial Institution Act, 1991, recognised “Profit and loss sharing bank”, as well as “community banks” as distinct categories of banks with separate identities from ordinary commercial banks. It cannot be said that employees of these omitted banks cannot indulge in banking malpractices. The definition therefore should be amended to reflect these later day categories of banks.

Furthermore, section 51(1), of the Banks and Other Financial Institutions Act, 1991, makes clear that certain banking institutions are for purposes of the banking law, not classified as ordinary commercial banks, or merchant banks. In other words they constitute a class by themselves. These banks are the Nigerian Industrial Development Bank Limited, Federal Mortgage Bank, Nigerian Bank for Commerce and Industry, Nigerian Agricultural and Cooperative Bank Limited, and the fund established under the National provident Fund Act. No mention of these institutions is made under the definition of “bank” contained in section 15, of the Bank Employees, Etc. (Declaration of Assets) Act. Certainly these are banking institutions that handle enormous business given their specialized nature. Their employees should be adequately covered by the law, and, therefore, be made to declare their assets like all the other bank employees.

In conclusion, it may be observed that the Act is yet another effort aimed at using the law to regulate banking business, and ensuring stability, and probity in the banking system. Research did not produce any evidence of cases prosecuted under the law. Apparently, the first and only declarations were made in obedience to the law after it was first made. Since then, there appears to be no follow-up action. Two interpretations of this situation of things become possible. First, the law is being faithfully observed, and therefore, Nigerian bank employees do not engage in malpractices that result in dishonest enrichment of themselves or others such as their relatives, associates and privies. Second, that the secretary to the Federal Government, as the “appropriate authority” charged with responsibility of initiating investigation of declaration of assets under the Act, has failed to properly discharge this obligations. If the latter view is correct, as it is submitted, then it reinforces the earlier criticisms of the choice of the Secretary as “appropriate authority”. The appropriate measure would require the setting up of an independent organ charge with the responsibility of investigating of

declaration of assets by bank employees. Perhaps the emergence of the Economic and Financial Commission (EFCC) may be a new factor to be reckoned with in this regard.

The Dishonoured Cheques Offences Act

This Act is a simple legislation enacted in only four sections. Nevertheless, it represents another legislative effort made in the quest for a clean banking system in Nigeria, devoid of malpractices. Anifalaje²⁰ described the Act as: “a statutory intervention in contractual relationship purposely to punish fraudulent promises and the offences it creates has generally been founded on fraud.”

The above statement epitomizes in a rather beautiful manner, the object of the Act as a weapon in the fight against banking malpractices. Section 1(1), of the Act, creates an offence against any person who obtains means of a cheque or induces the delivery to himself or to any other person, anything capable of being stolen, or obtains credit for himself or any other person by means of a cheque, which when presented for payment not later than three months after the date of the cheque, is dishonoured. To sole ground is the non-availability of insufficiency of funds standing to the credit of the drawer of the cheque at the drawee bank. Upon conviction, a drawer, being a human person would be liable to two years imprisonment without the option of a fine. A corporate person on the other hand, shall on conviction be sentenced to a fine of not less than ₦5,000.

However, under section 1(3), an accused shall not be convicted by contravening the law if the court is satisfied that even though the cheque was dishonoured, that at the time of its issue there was reasonable ground for him to believe, and that he did believe, in fact, that it would be honoured, if presented for payment at the drawee bank within the three month period. Anifalaje, has condemned this mitigation provision in very strong terms. According to him:

It is hardly in doubt that this statutory defence is a condonation of iniquity for it effectively denies that any bank customer has a duty to care that his account is actually in funds before drawing any cheque. That regrettable defence has considerably vitiated the force and effect of the fundamental provision of section 1(1) of the Act and therefore has rendered the entire 1977 Act less meaningful.²¹

It is submitted that the above criticism of the law is rather too harsh. Much as any law is enacted to regulated human conduct, and punish deviants, there is also a duty to protect proper conduct undertaken within the confines of the law.

²⁰ Anifalaje, J.O. “Dishonoured Cheques Offences Act 1977 No. 44. Twelve Years After”; Being a paper presented at the seminar on banking and other financial malpractices held at the Institute of International Affairs, Victoria Island, Lagos 24-26 April 1989.

²¹ Ibid.

The criticism of the mitigation provision by Anifalaje, therefore, seems to forget the protection which the law should afford a bank customer who has a pre-arranged overdraft or other credit facility with the bank. In the ordinary course of things, such a facility is bound to generate in the drawer, reasonable belief that the cheque, would be honoured, as shown by the decision in *Oyewole v. Standard Bank of West Africa, and National Bank of Nigeria v. Fasoro*²² considered earlier in this work. A banker who grants overdraft to his customer, is in contract and duty bound to honour the customer's cheque within limit of the agreed overdraft. Similarly, the customer is entitled to expect that the facility cannot be overdrawn unilaterally, and his cheque dishonoured. On these principles, therefore, it is concluded that the mitigating provision of the law is in order, and that the criticism of it by Anifalaje, is somewhat too harsh.

The deterrent propensity of the Act is continued in section 2 by virtue of which any top corporate executive, be he designated director, manager, secretary or other similar company staff or any person purporting to act in any such capacity is sought to be made liable for corporate misdeed. Accordingly, any such person coming within the description given above, against whom connivance or consent is established, or who has been in any way negligent of his official duties has occasioned the criminal issue of a dud cheque is himself liable. To this end, he must be held jointly liable, alongside his company. However, the punishment of two years jail term without option of fine, provided in section 1(1)(b) of the Act will be imposed on such person.

Section 3, of the Act deals with the issues of prosecution, trial and conviction of persons charged under provisions of the Act. Banking is a federal subject under Nigerian law, but the section empowers the state's courts to handle cases arising within their territories.

In the light of section 4, the Act presents a just and equitable approach to the demands of legal justice. It prohibits the infliction of overlapping punishment for a conviction, which may become inadvertently possible. This approach is necessary in view of the fact that over the decades, a plethora of penal laws have provided for the same offence under different names and within different contexts.

In the final analysis, the Act, it must be observed, provides yet another visible manifestation of the relevance, and dynamism of Nigerian banking laws in addressing changing conditions. The need for a law on dud cheques arose as a result of the expansion of the Nigerian economy in the 1970s following the "oil boom". Widespread growth in economic activities resulted in an increased

²² The relevant citations for the two cases are (1968), ALL NLR 449, and (1977) 3 OYSHC (pt. 1) 21, respectively.

demand for banking services, and which in turn increased the scope for malpractices that tended to abuse the system. The issue of worthless cheques in purported settlement of obligations became the order of the day. The desire to arrest this ugly trend was fuelled by a nationwide clamour for stiffer penalties for fraudsters, and other criminally-minded persons who engaged in the unholy conduct of issuing dud cheques. In 1976, the committee headed by Dr. Pius Okigbo,²³ an Economic Adviser to the Federal Government, which reviewed Nigeria's financial system addressed the issue. The Committee strongly recommended a penal law with nationwide reach, to combat the use of dud cheques in the economic life of Nigeria. The acceptance of this worthy recommendation gave rise to the promulgation of the 1977 law on dishonoured cheque.

At the time of writing this book, there is a bill before the National Assembly to amend this Act in order to provide for recent developments in the area of banking malpractices and other economic frauds in the country.

Institutional Framework

Institutional framework for combating banking malpractices refers to the key organs of state that play vital administrative, detective and investigative, as well as adjudicatory roles in the quest for eradication of banking frauds and diverse malpractices. The Central Bank of Nigeria is the apex banking institution vesting with authority and charged with the full responsibility of supervising the nation's banking system. In the discharge of this role, the Central Bank, the police force, and the judiciary play complementary roles. Together, they employ methods that are administrative, detective and investigative, as well as adjudicatory in a bid to give effect to the legal framework of regulatory legislation enacted in connection with banking matters. The desire to achieve a stable and viable banking system capable of protecting the assets of the depositing public, as well as generating overall confidence underlie the institutional base of banking regulation in Nigeria.

Administrative Institutional Regulation

The approaches to combating banking malpractices which are adopted by the Central Bank are varied. They include the appointment of a Director of Banking Supervision under section 30, of the Banks and Other Financial Institutions Act, 1991. Though this officer, who is assisted by officers designated as examiners, the Central Bank periodically examines the books and affairs of each bank to ensure compliance with the law. In order to prevent, and detect any malpractices by

²³ Okigbo P.N.C Report of the Committee on Nigeria Financial System (Federal Ministry of Information, Lagos) 1977 p.9

banks, these examiners have power to require from directors, managers, and officers of banks, such information and explanation as they deem necessary. Additionally, examiners have a right of access at all times to the books, accounts, and vouchers of banks. Furthermore, the Governor of the Central Bank is empowered under section 32, of the Banks and Other Financial Institutions Act, 1991, to order a special examination or investigation of the books, and affairs of a bank where he is satisfied, *inter alia*, that the bank has been carrying on its business in a manner detrimental to the interest of its depositors and creditors. Indeed, it was as a result of the invocation of this power that the Central Bank then classified several banks as “distressed”, and has begun a tough process of revoking their licences and suspending those of other “ailing” banks, and has even taken-over some others whose management it vested in the Nigerian Deposit Insurance Corporation.²⁴

Bankrupts and other fraudulent persons who are most likely to run the affairs of a bank dishonestly, and who are certain to indulge in malpractices are prevented from doing so by the Central Bank. The Bank does this through denying such persons the opportunity to manage bank affairs, by virtue of its powers under section 44, of the Banks and Other Financial Institutions Act, 1991. This section embodies the power of disqualification and exclusion of certain persons from the management of banks. Accordingly, no person shall be appointed or shall remain a director, secretary, or officer of a bank who, *inter alia*, is declaring a bankrupt, or is convicted of any offence involving dishonesty or fraud, or is guilty of serious misconduct in relation to his duties. Similarly, any person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud shall not be employed by any bank in Nigeria. Banks operating in Nigeria are thus required under section 44(1), to seek and obtain Central Bank approval for the proposal appointment of any director or chief executive.

Other institutions that play vital roles in the smooth administration of law designed to prevent and detect banking malpractices, include the Nigeria Police Force. The police as a national institution is charged with the prevention, detection and investigation of crimes, as well as the prosecution of criminal suspects. Where, thus, fraud or other malpractices occur within the banking system, it is the duty of the Police to investigate and prosecute all those connected

²⁴ The Central Bank of Nigeria, made an example of two merchant banks – Kapital Merchant Bank, and Financial Merchant Bank, by revoking their licences, and suspending those of Republic Bank Limited, and Broad Bank of Nigeria Limited. The management of five commercial banks were taken over in May 1993. Those taken over included African Continental Bank, Mercantile Bank, Pan-African Bank, New Nigerian Bank and Cooperative and Commerce Bank. Most of these banks no longer exist as independent banks today.

with the offence so committed. The Banker's committee is yet another body that assist in the quest for a clean banking system. The secretary of the Banker's Committee maintains a register of terminated, dismissed or convicted bank staff on the ground of fraud or dishonesty. Banks often apply to, and obtain prior clearance from the secretary of the Banker's Committee in respect of persons, being senior officers, moving from one bank to another. The extent of the importance attached to the character and reputation of high bank officials is well demonstrated by section 44(6), which makes it an offence punishable with ₦50,000, fine, or a jail term of not less than five years, or both, in case of a default. An offence will be deemed to have been committed in this regards, where a bank is proved to have employed a disqualified person. In such a situation, both the bank and its officer or officers responsible for the appointment of such person will be held liable, jointly and severally.

The Nigerian Deposit Insurance Corporation is one more institution involved in the regulation of banking business. It is the watchdog of the banking industry with the role of insuring depositor's asset with banks. In the event of the Central Bank being satisfied that it is in the public interest to take over the management of an ailing bank, or to order its liquidation, the Governor of the Central Bank may appoint the Nigerian Deposit Insurance Corporation as the official receiver or as a provisional liquidator. When so appointed, the Nigerian Deposit Insurance Corporation shall be virtue of section 38(3), of the Banks and Other Financial Institutions Act, 1991, having the power conferred by or under the Companies and Allied Matters Act, 1990 and shall be deemed to have been appointed a provisional liquidator by the Federal High Court for the purpose of the Companies and Allied Matters Act.

The office of the Secretary to the Government of the Federation also plays a vital role in connection with the verification of declaration of assets by bank employees. Under section 6, and 10 of the Bank Employees, etc. (Declaration of Assets) Act, the Secretary is empowered to direct thorough investigation into the assets and activities of a bank employee, including the assets of his spouse, relative parent, associate or privy.

Finally, at the apex of institutional regulatory framework, stands the Court of Justice. By virtue of section 48, of the Banks and Other Financial Institutions Act 1991, it is enacted that: "Notwithstanding the provisions of the Act of any law, the Federal High Court or tribunal constituted under any enactment shall have jurisdiction to try any offence under this Act and to impose the full penalty prescribed therefore."

Functional Institutional Regulation

The quest for eradicating banking malpractices reflects itself in rules that stem from certain functions of the Central Bank. Being the banker to other banks, the Central Bank decides on what amount of overdraft it can allow each bank in a given situation. The Banker's Committee also serves as a forum for meeting other banks and advising them on how to avoid pitfalls, and improving efficiency without having to resort to malpractices in case of temporary difficulties. The apex bank also used is supervision of the cheque clearing house to monitor the activities of banks.

The monitoring of bank activities is intended to ensure their compliance with regulations. These regulations of course, include those designed to prevent and also to detect malpractices. The first method employed by the Central Bank to achieve this objective, is the appraisal of each banks statutory returns to the Central Bank, required under section 25, of the Banks and Other Financial Institutions Act, 1991. Such appraisals assist the Central Bank to make representations and recommendation to government on policy matters relating to banking. The second method is that of examination of bank books and records to ensure compliance with regulations set out for banks in statutes, as well as the central bank's own guidelines.

Finally, it may be pointed out that in the exercise of its supervisory function, the Central Bank has during the year 2006, issued a "Code of Corporate Governance for Banks in Nigeria Post Consolidation." The code which became effective on April 3, 2006 is designed to eliminate the causes of weakness in corporate governance of banks in Nigeria, as well as promote best practices on corporate governance. It further addresses the organizational structure of banks and provides for industry transparency, due process, date integrity, disclosure of requirements, risk management and role of auditors.

It is hoped that the code will help user in a new era of banking integrity devoid of the ills of pre-consolidation era.

Chapter 14

Islamic Banking – Principles and Constitutionality

Introduction

The Islamic banking system which is also referred to as profit and loss sharing (PLS) or '*Sharika*', caters for the banking needs of segments of the population for which the Western type of bank is unsuitable and whose savings, therefore, remain outside the banking system.

The system views interest on savings and credit (to a certain degree) as usurious and so prohibit it. Under the system, a loan is granted either interest free or subject to the risks and vicissitudes of the particular business, in which case losses or profits are shared on agreed terms and conditions.

It has been argued that the principal restriction under which such a financial system works is the injunction against interest or *riba*, that is, the fixed or predetermined return on financial transactions and not an uncertain rate of return represented, for example, by profits.

Thus, the emphasis on a profit-sharing concept provided the basis for the Islamic Financial System.

Islamic Banking Operation in Nigeria

Generally, it is believed that the idea of Islamic Banking was conceived in the second half of the 1970 and by 1985 about 45 countries – most of the Muslim world – had embraced the system.

Khan and Mirakhor have argued that the basic framework of Islamic Banking takes two forms; the establishment of Islamic financial institutions side by side with the traditional or orthodox banking system as found in Egypt, Sudan, Geneva and the Bahamas; or the restructuring of the whole financial system of the economy in accordance with Islamic precepts, as in the Republic of Iran.

Under the system cash depositors are regarded as shareholders of the bank (albeit – 'sleeping partners') and, consequently, participate in the sharing of the bank's profits and losses. Thus from the depositor's perspective, Islamic banking may be regarded as a mutual fund or an investment trust.

The lender becomes a partner in the borrower's business which then becomes a joint venture *ex post facto*.

This concept of banking is new in Nigeria and was introduced by the promulgation of the BOFID,¹ which empowers the Governor of the CBN to grant these banks exemptions where appropriate. Approval-in-principle was granted for the establishment of two profit and loss sharing banks, Akida and Albarika, in 1992.

The first ever full-fledged Islamic Bank on the soil of Nigeria was founded and it was called Muslim Bank of West Africa Ltd. This bank which was operated along Islamic principles was founded after Nigeria's Independence.

However, its licence was revoked by the then Commissioner of Finance, late Chief Obafemi Awolowo, under the provisions of the Banking Act of 1969. Until now, the CBN which controls operations of banks in Nigeria declined granting approval for the establishment of any Islamic Bank.

Its past existence in Nigeria can be confirmed from the cases of *Nigerian Breweries Ltd. v. Muslim Bank of West Africa Ltd.*² and *United Insurance Co. v. Muslim Bank of West Africa Ltd. (1972) NCLR 9*.

However, in June 2011, the CBN under the leadership of Sanusi Lamido Sanusi issued licences to *Jai'z International Bank Plc* and *Stanbic IBTC Plc* to practice Islamic banking to its optima level, after the issuance of the substantive guidelines for the regulation and supervision of non-interest banking in Nigeria. This is a new era for the Muslims in Nigeria.

Islamic banking and financial services have been a mirage soon after Muslim Bank West Africa Ltd was forced out of operation. There were agitations though to have a re-introduction of this type of banking but political insincerity and lack of political will to imbibe its operation with legal enhancement contributed in no small measure to its impossibility, until recently. A part of these problems is the fictitious assumption that the Nigerian Constitutions have not at any point provided for its establishment.

It was however discovered that this assertion is far from being correct. Through historical and analytical research approaches, it was revealed that the three successive Constitutions of the Federal Republic of Nigeria have continually bestowed due legal recognizance and enabling right of operation to Islamic banking and financial services that are in compliance with the principles of *Mu'amalat* (Islamic Law guiding economic system generally).

Islamic banking and finance plays an important role in the economic lives of the people, businesses and state as a whole. This reality unstoppably leaked out

¹ (1991), s.9(2)(b)

² (1963) LL.R. 78 @ 80.

from the incontrovertible progress that is emerging from many ways by which it has proved its worthiness vial its virility against the recent financial quake that rocked the global financial market; maintains a steadily increasing capital base and; according to the conviction of Iqbal Khan,³ its continuous sustainability of the tempo of business growth across the globe.⁴ This explains the irresistible essence of Islamic banking and finance in human life. As it is, Islamic banking cannot be operated in vacuum in any jurisdiction all over the world, Nigeria inclusive, unless it has found a place of legal permissibility derivable from the Supreme law.⁵ In Section 1 (1) arid (3) of Constitution, it is maintained that the constitution is supreme and no other law shall prevail over it. It reads respectively:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

In the case of *AGF v. AG of the 36 States*⁶ Kalso, JSC in -his sagacious pronouncement states that:

“This section deals with the supremacy of the Constitution and has made it abundantly clear and in no uncertain terms that the provisions of the constitution are superior to every provision made in any Act or Law and are binding and must be observed and respected by all persons and authority in Nigeria. The National Assembly must also observe full compliance with the provisions of this Constitution.

Section 1(2) also provides:

If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”

The Constitution has though been described as a framework for legal provisions that guide the conduct of affairs and empowers the occurrence of certain things in Nigeria. This is probably why it is viewed that to secure due and

³ Managing Director, Head of Global Islamic Finance, HSBC Amanah Finance, UK

⁴ “Islamic banking today is an industry that is still evolving. The industry manages approximately \$180 Billion dollars today, growing at approximately 15% per annum. The growth of Islamic banking is a result of economic growth in the Islamic world fuelled primarily by oil wealth. This growth created a growing middle-wealth segment and hence made banking a necessary service to the larger segment of the population rather than a service for the few as had been the case some 10 to 15 years earlier”, Khan, i. issues and Relevance of Islamic finance in Britain. (http://www.islamic-banking.com/iarticle_3.aspx~). accessed on 16-07-2011; see also: Adebayo, R. I, the Motivating factors for the Viability of Islamic Banking in Nigeria. Journal of Islamic Banking Karachi, Volume 27, No 2, 2010, 97-98.

⁵ This is usual referred to as the ground norm

⁶ (2002) 5 MYSC Pp. 129 - 130, paras. G - A

permissible operation, a business must have a place under the constitution of the land. Hitherto, some scholars,⁷ financial experts,⁸ Christian individuals⁹ and professional group¹⁰ maintain that Islamic banking lacks recognition under the Constitution of the Federal Republic of Nigeria. It is often brought under the provision, of fundamental human right,¹¹ which is still being contended especially by Christians, who believe it violates their right. However, there is no doubt about the right to have Islamic Bank as enshrined under the chapter of the Constitution dealing with fundamental human right but contrary to the main assumption, this research has dug deep into other provisions of this constitution, from when Nigeria became a Republican State and came up with facts that seek to put the perception in proper perspective.

It should be mentioned that the idea of having a constitution to govern the affairs of government and social interactions was first reiterated by, a philosopher, Aristotle, when he wrote on the classification of governments. According to him, a credible constitution is the one that is focused on enabling the citizenry to enjoy their privileges without compromising their rights. The Rome of Stoic philosophers took advantage of this development to reflect a kind of universal constitution.¹² This model has thereof set a ball rolling for other countries to imbibe. Since then, constitutional idea has been further developed to meet the current status. Through the works of philosophers and scientists like Thomas Hobbes (1588-1679), John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1788) the idea of modern constitution came up, particularly after the European revolution, which necessitated the reform. This constitution recognised the features that make up the modern constitution all over the world.¹³ United Kingdom, Canada, India, South Africa and Nigeria are few of the countries that

⁷ Abikan, A, I, The Constitutionality of Islamic Banking, in Contemporary Issues in Islamic Jurisprudence, A book published in honour of the Chief Justice of Nigeria, Honourable Justice Idris fLegbo Kutigi, Rawel Fortune Resources, Benin, 2009, Chapter 7, 12-13 in Pages 94-95. <http://www.unilorin.edu.ng/publications/abikan/CONSTITUTIONAT-TTY%20QF%20ISLAMIC%20BANKING.pdf>, accessed on 3rd 1 October, 2010. See also: Adebayo R. I, The Motivating Factor for the Viability of Islamic Banking in Nigeria, op cit, 98.

⁸ Sola.Gbade, O., Non-Interest Banking: A Model Surrounded By Controversy. (<http://www.nigerianbestforum.com/generaltopics/?p=101353>). posted on June 27, 2011, assessed on 04-07-2011.

⁹ Yusuf, I. A., Much ado about Islamic banking (<http://www.thenationonline.net/2011/index.php/busiress/10464-much-ado-about-islamic-banking.html>). 26th June, 2011, assessed on 04-07-2011.

¹⁰ Nwokoji, C., Islamic Banking: How It Will Operate In Nigeria, (<http://www.zirnbio.com/nigeria-f-Todav/articles/PKvMsvpNwhM/ISLAMIC+BANKING+HOW+WTT.T+OPERATE+NIGERIA>). nigerianbestforum.com, posted on 27-06-2011, assessed on 04-07-2011. The group called AiMP stood against the constitutional legality of this banking type. See: Chapter IV - Fundamental Rights, particularly Section 38 (1) Constitution, Federal Republic of Nigeria. 1999 (as amended, 2011).

¹² Malemi, O. E., *The Nigeria Constitution Law*, Princeton Publishing Co., Lagos, 2006,9-10.

¹³ Ibid. 10

have adopted the modern constitution.

Thus, this chapter is divided into four parts. The initial part introduces the index of the paper content while the second part relays the historical trace of Islamic Banking in Nigeria. The third part captures the thrust of the research work. The entire content is then enveloped by conclusion.

As a sovereign state¹⁴, Nigeria got her Independence in. 1960 but much as most other forms of businesses and industries commenced operation prior to this time, Islamic bank did not. Several reasons could be responsible for this but it could not be unconnected with the dearth of technical know-how with which to operate and people were apparently least informed about it. This led to its late starting. This does not contradict the fact that there were people that struggled to see to its take-off but their efforts could not materialise until soon after independence. It should be mentioned that the struggle for indigenous participation in banking, which eventually led to the draft of CBN Ordinance and Banking Acts in 1958.¹⁵ This also gave way to the proposed participation (establishment) of Islamic Bank. Many other indigenously owned banks commenced before Independence.¹⁶ And as against the popular adoption of historical record, BBWA was not actually the first bank in Nigeria but African Banking Corporation, which marked the outset of conventional banking in Nigeria, back in 1891. This bank changed to BBWA afterwards.¹⁷

In a way to evidence the fruit of this struggle, the first ever full-fledged Islamic Bank on the soil of Nigeria was founded and it was called Muslim Bank West Africa Ltd. This bank, which operated along Islamic principles, was founded after Nigeria's independence. However, its licence was revoked by the Federal Commissioner for Finance. Chief Obafemi Awolowo, under the provision of the Banking Act of 1969. Until now,¹⁸ Central Bank of Nigeria which controls the

¹⁴ See: Sections 2 (1) and (2); 3 1()

¹⁵ The first legislation on banking was Banking Ordinance, 1952 the aimed regulating banking operations especially the monopoly of Bank of British West African (BBWA that changed to Standard Bank and finally first Band of Nigeria Pic, the oldest banking establishment in the country. BBWA was established many to serve the expatriates and accomplished the goals of the colonial masters. See also Abikan, A. I., The legal framework for Islamic Banking in Nigeria, accepted for publication in UDUS Journal (in press).

¹⁶ Ibid, See also: Orisankoko, A. S, *Islamic Law as Panaceas to the unethical Practices in the Contemporary Nigerian Banks*, in Issues of Administration Islamic Law, Al-Maslaha journal of Law and Religion Publication of the Nigerian Association of Muslim law Students (NAMLAS) University of Ilorin Chapter, University of Ilorin, Ilorin Nigerian, 2009/2010, 186 and 191

¹⁷ Uche C. U and Ehikwe. A, E. Globalization and The marketing of Banking Services in Nigeria, A paper presented at the 2001 World Services Congress , Hong Kong, September 19-21, 2001,2.

¹⁸ January 13, 2011 when framework for the regulation and supervision of institution offering Non-interest financial Services in Nigeria, referenced FPR/DIR/CIR/GEN/01/010. Which was further to CBN circular reference No. BSD/Dir/Gen/NIB/01/008 was released, all Nigeria could boast of was an institution of Non-interest banking which some of the few conventional banks floated as Islamic banking window. Hence, see paragraphs 1.0 of the Framework and 3 of the Guidelines on Shariah Governance for Non-

operations of banks in Nigeria declined granting approval for the establishment of any Islamic Bank.¹⁹

To be more convinced on this position, Ajayi reported the case of *Nigerian Breweries Ltd. v. Muslim Bank West Africa Ltd.* (1963), a legal proceedings that concerned the interest of this bank.²⁰ *United Nigerian Insurance Co. v. Muslim Bank (West Africa Ltd)*²¹ is another precedent reported by Odeibie.²² In further confirmation of the past existence of this bank, Abikan related that he once espied a building somewhere in Lagos City, on which the inscription “Islamic Bank House” was boldly engraved. Since this nascent experience however, the faith of the Nigerian Muslims has continuously suffered in the hands of the successive Nigerian Governments until June 2011, when the jinx was finally truncated. The Central Bank of Nigeria, under the headship of Sanusi Lamido Sanusi issued licences to Jai’z International Bank Plc and Stanbic IBTC Plc to practise Islamic banking to its optimal level, after the issuance of the substantive guideline for the regulation and supervision of non-interest banking in Nigeria. This is a new era for the Muslims in Nigeria.

Islamic Banking Operation in Nigeria in Post-1990 and Now

Following an attempt to respect the constitutional right of the Muslims by meeting the financial transaction aspect of their *Ibadah*,²³ Islamic Bank got impetus during the military regime of ex-President General Ibrahim Badamosi Babangida. In 1990 the Supreme Ruling Council promulgated some Decrees a part of which allowed the institutionalisation of Profit and Loss Sharing (PLS) Bank, This was probably due also-pursuant to the 1986 financial liberalisation and deregulation under control. As part of fulfilling the objectives of Decree50 towards promoting small businesses and economic buoyancy of the country, Federal Government established People’s Banks and allowed the Community Cooperative Banks to operate but to the dismay of the Muslims, none of these government banks operated in the direction of PLS and neither was any of these banks was registered to operate Islamic banking.

interest Financial Institution in Nigeria, it could be presumed that Nigeria now has a respite on owing her full-fledged Islamic banking is disguise of Non-interest Financial Institutions.

¹⁹ Karkarku, M. A, *The need for Islamic Banking in Nigeria*, Being the Paper presented at the 1st International Conference on Islamic Banking and finance organized by Crescent University Abeokuta, Ogun State. 20-22 March, 2010 (Abeokuta 21 March 2010), 7.

²⁰ Ajayi, O. A, *Law and Practice of Banking*, Andy-P Corporate Bureau , Ibadan, 1999, Pg. 57. The full citation of the report was not captured.

²¹ (1972) NCLR 9; see also: Ajayi, *Ibid*.

Odeibei, F. F (Ed), *Practice notes for Trial Lawyers (A Compendium of Legal Principles and Authorities for General Research and Brief Writing)*, Pearl Publishers, Port Hacourt, 2008 59.

²³ Section 38 (I), constitution. Federal Republic of Nigeria, 1999 (as amended 2011). See also, Amoloye-Adebayo, A, *Shar’iah Law, Human Rights, and Gender Equality in Nigeria*, Al-Maslaha Journal of Law and

Taking the bull by the horn, two conventional banks operating in Nigeria applied under the provision of the Decree to operate Non-interest banking as designated for Islamic banking, which also bears Islamic banking window. Unfortunately however, only the Habib Nigeria Bank Ltd duly completed its registration and operated between 1991 and 2004. The bank was first granted provisional licence (Approval-in-principle) in 1992 and by 1996 it was granted full licence merely to operate Non-interest Banking window still, which it formally commenced in October 1998. All its efforts to secure licence to operate full-fledged Islamic Banking was however abortive. During this period, the bank window started by floating six of *Shari'ah* compliant products and services, amongst which were: *Wadiah* (Deposit mobilisation), which took the form of Non-interest Savings Account; General Purpose Savings Account (GPIA); Specific Purpose Savings/Account (SPIA); others included Investment Financing; *Al-Qard Al-Hassan* (Benevolent Loan). The bank thrived well in this enterprise until 2004, when CBN came up with recapitalisation policy. This necessitated how Habib Nigeria Bank pic merged with Platinum Bank and changed their names to Platinum Habib Bank Plc (Bank PHB). The list of conventional banks interested in operating non-interest banking window increased afterwards when UBA came aboard. Some two conventional banks in Nigeria with windows for the Non-interest banking hence include Platinum Habib Bank Plc. (Bank PHB) and United Bank for Africa Plc. (UBA). Finland Bank Plc (FinBank) came up in 2010 that it has acquired a mega Islamic Bank in Gambia and it would therefore use the platform to promote Islamic banking in Nigeria. Stanbic-IBTC Bank Pic claims to have Shari'ah desk but this is not practically visible. Quoting Orisankoko and Shaffii, Adebayo reports that this assertion is not a true position as claimed by these banks. The veracity of this assertion was further verified through an interview with Mr. Bashir Oshodi, when he said: "My bank has not commenced Islamic Banking."

Through a follow-up interview, it further revealed that the bank has commenced operation of non-interest banking by the provision of the new CBN regulation.⁵⁸ Another conventional Bank, Afri-Bank Pic, had opened a Non-interest Banking Window. This therefore brought the total number of the conventional Banks operating valid Islamic banking window to three. Aside this, Al-Barakah Micro-finance Bank Ltd is a newly established bank in the category of Microfinance and it is operating on the pedestal of Islamic principles. Adjoining to this is the Lotus Capital Investment Limited, which is an investment company that operates in line with Shari'ah- compliant rules. So far, it is sufficient to conclude that the sector of Shari'ah-compliant banking and finance is making progress, far above the past record.

The Nigerian Constitutions in Focus

Constitutional enactment in Nigeria started before the country's attainment of independence. It started back in the colonial days, when the Governor Generals posted to administer the affairs of Nigeria thought it wise to have a directive guide for the legitimization of government businesses and the conduct of the citizenry. Before this time, Nigeria was made up of several settlements, each of which was identified with its characteristic features: language; ethnic identity, administrative and governmental style. So, following the colonization of these territories, the British masters, who represented the interests of the Queen of Britain became the overlords over time and oversee the affairs of these colonies, which gave birth to a nation after amalgamation on 1st, January 1914. For effective administrative processes and other factors each of them deemed it fit to have a constitution to guide his reign.

The first of these Governor-Generals to make the pioneer Constitution in Nigeria was Lord Lugard (1914-1921). His constitution recognised the need for a council that would see to deliberation of the affairs of the country. The second regime came up with another constitution, titled: "Clifford Constitution of 1922." This was the reign of Sir Hugh Clifford, the Governor and Commander-in-chief of the Armed Forces of Nigeria. The basic focus of the constitution was to create an expansion of the Council to accommodate more of the stakeholders, recognition of some other essential communities and election of the legislators. This constitution was replaced by the Richard's Constitution of 1946. Sir Arthur Richard (1945-1951) saw the need for a new constitution as precipitated in the Sessional paper No. 4 of 1945," which identified four bases. The fourth was of the Sir John MacPherson (1951). This constitution, titled "Macpherson Constitution of 1951", saw to the advancement in the political administration of the country by ensuring increase in the list of law makers at the legislative councils; provisions of Assembly in each region for the legislators and executives; stooped direction into the central legislatures but through sending of representatives from the regional legislators, among others.⁶⁵ Lyttleton Constitution of 1954 was enacted to round off the pre-colonial Nigerian Constitutions. Mr. Oliver Lyttleton was the secretary of the State for colonies. His constitution was as a result of 1953 London Conference of Nigerian political leaders. This constitution was more standard in outlook and contents than those before it. It provided for a true system of Federal Government which had three regional administrations under the practice of separation of powers. Civil service and judicial systems were both recognised. The constitution also recognised bi-cameral legislature for the North and West while unicameral was approved for the East. There were also the offices of Regional Premiers and Regional governors and the Ministers. Each of these successive constitutions had

their merits, which influenced the need to retain some of their provisions or have them built upon, as well as demerits that at different times impelled the need for another constitution.

Nigeria came up under self-government for the first time with her own constitution, titled “Independence Constitution of 1960”. This constitution came into force on the 1st October, 1960. In spite of the spirit of independence, the constitution still recognised the Queen as the Head of State, who was represented by the Governor General, Dr. Nnamdi Azikiwe. This, constitution fulfilled the dream of an independent country.²⁴ The force of this constitution however truncated, when Nigeria attained republicanism in 1963. Hence, the most recognised constitution for Nigeria was the 1963 because it consolidated the provisions of the 1960 and truly gave Nigerians their dreams.²⁵

It is worthy to mention that one irrepressible feature of the modern constitution, particularly in Nigeria, is the classification of the entire affairs into exclusive list, concurrent list and the residual list. The principle behind this classification is that each of the matters pertaining to the country must have an entity that should deal with it accordingly, depending on its nature and area of jurisdiction. Federal government is usually saddled with any matter affecting national issue in its entirety;²⁶ there are some that are left to be jointly handled by the governments of the states (federating units) and the federal government while some are left to either the states governments or local government authorities to look after, depending on their nature, sensitivity to the state security and public benefit in this regard, constitution is usually allowed to recognise these affairs and their various lists but the involvement of the legislature at the three tiers of government assist in spelling them out. The Constitution cannot make specific provision for every aspect of the nation and citizens’ lives but such power has been constitutionally vested in the National Assembly to make an Act that will specifically permit the operation of each of these aspects, as may be necessary. Section 315(1) (a), provides thus:

(a) an Act of the National Assembly to the extent that it is a law with respect any matter on which the National Assembly is empowered by this Constitution to make laws.

²⁴Yakubu J. A, *Constitutional Law in Nigeria, Op. cit.*, 19-24. This constitution further recognized the enactment of Constitution for the Northern, Western and Eastern regions but the provisions of the Nigerian Constitution shall prevail over those of these regions in case of conflict. See section I, Nigerian Constitution, 1960. See further Ibid. 25-39

²⁵Malemi. E, *The Nigerian Constitution Law, Princeton Publishing Co., Lagos 2006*, 38-39

²⁶ This includes Banks, banking bill of exchange and promissory notes. See: item 6, second Schedule, Legislative Powers, Part I, Exclusive Legislative list, 1999 Constitution, Federal Republic of Nigeria, (as amended, 2011)

Legalisation of Islamic Banking and Financial Services under the Nigerian Constitutions

Constitution is regarded as the most crucial and foremost legal instrument of any country. Yakubu describes constitution “as a blend of strict law or legal concepts or principles and political conclusions.” Corroborating this view, Malemi holds that “a constitution is the supreme law by which a state or country is governed.” These explain the true stand of constitution in any sovereign state, like Nigeria. However, given the facts that constitution has the sacrosanct roles of “strict laws or principles” as well as its “supremacy” over the governance of affairs of the state, as mentioned by Yakubu and Malemi, it then gives one the respite to believe that the issue of business and economic related matters, which come under the exclusive list shall not be excluded. To this end, Islamic banking will be examined from the provisions of the constitution of the Federal Republic of Nigeria, with particular focus on the 1999 Constitution (as amended), though historical trace will be made to the 1963 Constitution. Nigeria has enacted several constitutions, some of which ended up as mere draft and proposed constitutions because of certain circumstances that surrounded their implementation.²⁷

1963 CONSTITUTION

The 1963 Constitution of the Federal Republic of Nigeria came into force of operation soon after Nigeria transformed into a Republican state on the 1st of October 1963, three years after independence in 1960. Hence, the new name ‘Federal Republic of Nigeria’. This development marked a total departure from affiliation with the British colonialists. But historically, Olakanmi²⁸ observed that this change of status assumed no substantial meaning in terms of constitutional change due to the fact that a combination of factors fuelled serious political crises, suspended the 1963 Constitution and ushered in the military intervention on 15th January; 1966.

That notwithstanding, administration over national issue were not affected. The economic aspect of the constitutional provision and its enforcement was one of those that were not disrupted by military intervention. It can therefore be maintained that the contents of this constitution had some salient provisions that allow the activities of Islamic banking and finance in Nigeria. However, there is no express provision in this constitution that specifically mentioned or recognised

²⁷ There was the 1989 Constitution, enacted by the military President, Ibrahim Babangida; there was also the Draft Constitution of 1995 made by late General Sani Abacha. The logic behind the two proposed constitutions was to launch them into democratically elected Presidents. But because their regimes were truncated the use of the 1979 Constitutions was retained until 1999, when another Constitution was enacted to repeal the former. ³⁰ Malemi, E., *the Nigeria Constitutional law*, *op. cit.*, v

²⁸ Olakanmi, P. O., *The Nigerian constitutions: A Compendium*, Lawlords Publications, Abuja, 2008. Pg. ii

Islamic banking and financial services as such an economic and commercial enterprise that an individual or corporate institution should operate, yet the provision of Section 26 (1) gives a tenable ground for the promotion of economic and commercial activities generally, which did not exclude Islamic finance system. The provision reads thus:

Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.

Looking at this provision apparently, one will be deluded to believe that there is no relationship between the focus of the discourse and the cited provision. It would ordinarily be argued that the provision expressly deals more with the welfare of trade unionism and association. But it should be seen from the perspective that the provision is made up of two interconnected clauses, each of which can as well be independently applied to different situations. The underlined portion: *‘Every person shall be entitled to assemble freely and associate with other persons...for the protection of his interest’* is expressly permitting the coming together of people of like-minds to protect their interest, which can be in any form known to them; promoting their economic interest is one. If people fraternize for this sole reason, their liberty is derived from this provision, since there is no contrary provision; this therefore becomes automatically the permitting provision of the constitution to be relied upon. But the interpretation of this provision will be narrowed and too limited if it is only made to apply to fraternity and welfare of trade unionism and association only. It is clear beyond scintilla of doubt that this provision is like a two side sword because the provision reads: *“and in particular he may form or belong to trade unions and other associations.”* The underlined section denotes a summation of purpose. From the above underlined excerpt, it is clearly understood that the provision is a permitting clause for any group of people that have a reason to come together to promote economic activity; which could come in various legitimate ways, scales and nature like Islamic banking and finance; no single individual can from an assembly to promote such an interest. More so, the setting up of Islamic bank is underlain by the coming together of promoters (shareholders),²⁹ employees and customers. The business cannot operate in vacuum, unless with the people that joined interests, in line with the provision of *Shari’ah*, *Majlis Aqd* is germane to

²⁹ See Section 18 CAMA, CAP C20, Laws of the Federation of Nigeria, 2011

the validity of a business.³⁰

As part of other measure by which the Constitution confers right to promote Islamic banking and finance is through its religious permissibility, as mentioned earlier. This is found in Section 24 (1) and (4) (b) respectively.

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

*For the purpose of protecting the rights and freedom and free of other persons, including their rights and freedom to observe and practise their religions without the unsolicited intervention of members of other regions.*³¹

Looking at these provisions, it suffices to behold the fact that Islamic banking and financial services are a matter connected with the pursuit of religious fulfilment. Since religion is respected as a right that is fundamental to every individual,³² it thus becomes guaranteed for such individuals and or group to engage in such financial dealings. It is constitutionally allowed and legally permissible. It would thereof not be wrong to presuppose that these provisions had accorded the required leverage for the floatation of the defunct Muslim Bank West Africa Ltd.

1979 CONSTITUTION

Even though the disruption of the political stability shortly after Nigeria transformed into a Republican could not make the erstwhile Constitution work for too long. Nigeria got another Constitution on the 1st October, 1979 courtesy of General Olusegun Obasanjo (Rtd) through the efforts of:

The Constitution Drafting Committee (CDC), under the chairmanship of late F.R.A. Williams and 49 other members;

The Constituent Assembly (CA) headed by Hon. Justice Sir Udo Udoma.

The operation of this constitution was suspended on the 31st December, 1983 when Major General Muhammad Buhari and his counterparts late Major General Babatunde Idiagbon overthrew the government headed by Alhaji Usman Shehu Sagari (1979-1983). Notwithstanding, the constitution enjoyed a fair share of its tenure as an ultimate legal instrument for Nigeria.

Since the defunct Muslim Bank West Africa Ltd. Commenced under the force of law of the 1963 Constitution, and stopped operation, there had been no

³⁰ Orisankoko, A. S., *The Legal and Regulatory Frameworks of Islamic Mortgage Financing in Nigeria, Being an LLB (Common & Islamic Law) Long Essay*, Submitted to the Department of Islamic Law, Faculty of Law. University of Ilorin, Ilorin, Nigeria, 2011, pp. 36,48 and 88.

³¹ Italics are mine for emphasis

³² *Ahmad v. Inner London Education Authority of ILEA* [1978] 1 Q. B. 38

Islamic financial institution until later in 1992. That notwithstanding, there were some provisions of 1979 Constitution that could have accommodated the operation of Islamic banking and finance. To begin with, 'Sections 16 (1) c and 37, Constitution, 1979 particularly focused on the permissibility of financial dealings, respectfully. In the words of the provisions:

The State shall, within the context of the ideals and objectives for which provisions are made in the Constitution:

(c) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizens to engage in any economic activities outside the major sectors of the economy;

In connection with the constitutional right of the citizenry to operate Islamic banking and finance, there is a lucid clarification to the effect that Islamic banking and finance was treated with legality and permissibility under this particular provision of the constitution. The benchmarks for this assertion include:

- (1) The state is operating the economy of the country without prejudice to the economic interest of the individual citizen;
- (2) There is delineated area of economic activities that the citizens can venture into and;

The major sectors of the economy, which the citizenry are prohibited from exploration include oil and other resources unless with due authorization.

Islamic banking and finance is excluded from this major sector because Central Bank of Nigeria is vested with the supervisory and regulatory power to control the banking sub-sector of the economy. The floating of Islamic banking and finance as an area of economic interest does not require specialized authorization except due authorization from the CBN.

More, the connectivity of this provision to the transaction of the Islamic banking can be found in Section 37 of the Constitution, wherein it is declared that as a matter of fundamental right.

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade unions and other associations for the protection of his interests.

The earlier argument made on this (similar) provision is adumbrated forth with to avoid tautology. But it should be mentioned that assuming but not conceding that what affirms the religious permissibility of Islamic banking under this provision are the elements of religious undertone, even though the provisions were enacted to enjoy cast applicability in the light of the provision of Section 39

(1) (a)³³, the possibility of invalidating the combined effects of this constitutional provision in recognizing Islamic banking has been checked by the provision of Section 35 (1) of the same constitution. The provision reads thus:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone or in community others and in public or in private) to manifest and propagate his religion or belief in worship teaching, practice and observance.³⁴

As a matter of religious obligation, doctrine and practice, it is as of right that Islamic banking and finance could be operated against the backdrop of its inalienable connection with the propagation of the Islamic faith. Thus, under the 1979 Constitution, Islamic Banking and financing services is legal and cannot be declared *ultra vires*, to the extent of its compatibility and consistency.

1999 CONSTITUTION (AS AMENDED, 2011)

This amended constitution is a step ahead, of the erstwhile Constitutional legislation. Following the incomprehensive nature of the said Constitution, it became necessary to carry out the amendment in order to give room for what were considered highly essential to be included and excluded. The amended constitution was assigned by the Clerk to the National Assembly on the 10th Day of January, 2011 to give it force of legitimacy.

Regarding the constitutionality of Islamic banking and nonbanking financial institution services it has been argued in some quarters, as observed earlier, that no Constitutions of Nigeria had made provision for Islamic Banking and non-banking financial services save as provided under some provisions, where it has enjoyed the protection of Islam as a faith one of these scholars submits that there is no place in the Constitution of the Federal Republic of Nigeria 1999 or the ones before it where provision is/was made for Islamic banking or any other type. This must be pointed out from the outset. This implication of juristic thinking is that Constitution does not pretend to be capable of making provisions for all matters that needs to be further, by its supremacy,³⁵ it portends to give validity to all the laws of the land as the makers of such laws derive their law makings powers from it.³⁶

It is quite right though that the Constitution does not expressly and

³³ Right to Freedom from discrimination protects every citizen from being discriminated against on the matter of religious affiliation, propagation or practice.

Underline mine for emphasis

³⁵ This has been emphasized in the case of in *EC v. Musa* (2003) Vol. 3. MJSC1

³⁶ A. I. Abikan, *The Constitutionality of Islamic Banking*, *op. cit.* Pg. 12.

specifically provide for each and every aspect of life and even governmental affairs but it will at least make a general framework under which each of these aspect of life especially can derive its force of law to be able to operate with elements of legality. The Constitution of the Federal Republic of Nigeria, as partly x-rayed above, had evidenced the place of Islamic banking and non-banking financial institution under the past constitutions, as demonstrated by various provisions that allow the pursuits of economics and commercial activities generally. Islamic banking and non-banking financial services are classified under a sector of the 68economic interest and no more. In the light of this,³⁷ it is beyond balance of probability that they have not been captured directly/indirectly under these numerous Constitution of the Federal Republic of Nigeria.³⁸

However, the current Constitution of the Federal Republic of Nigeria (as amended, 2011) has not discriminated against the constitutionality of Islamic banking and finance either. Generally, as it has been reiterated, there is no particular provision that specifically authorizes the operation of Islamic banking and finance but this is not in exclusion of other varieties of the economics and commercial transactions either. Conventional banking, mortgage services and even the day-to- day commercial activities or any other form of economic enterprises are not exempted. It is therefore upheld that all these are collectively treated under the provision dealing with economic freedom under the current Constitutional regime. The Constitution needs not be specific, particular or direct in making provision that will affect each of the institution or economic activities/products/service, being a supreme legal framework for the entire issues affecting the generality of Nigerians and governmental affairs. This is not peculiar to the economic aspect alone; it has not made comprehensive or particular provisions for electoral activities, other than mere and skeletal mention of the generalized provision. This is why Nigeria has a separate Electoral Act in operation.

To further clarify this assertion from the lenses of the Constitution. Section 16 (1) (c) and (d), which bothers on economic objectives porously accommodate the promotion of Islamic banking owing to the fact that this provision is constitutionally addressing economy generally without delimitation in term against a class of economic activities. The section reads:

“Furthermore, this provision has justified the right/privilege of every citizen to venture into any legitimate economic activity, provided no liability is considered against the major areas of the economy, and mentioned above. The

³⁷ This is akin to an Islamic jurisprudential maxim: “The basic presumption is that all transaction are permissible unless they are prohibited by a text.”

³⁸ 1963,1979 and 1999 (as amended)

maxim applies: “The basic presumption is that all transaction are permissible unless they are prohibited by a text.” Though this provision comes under the non-justiciable chapter of the Constitution, which is generally treated with reservation because it has only conveyed privilege and hot right, yet it has been used to mention the constitutionality of Islamic banking. This is further substantiated in sub-section (1) (c):

(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sector of the economy:”

In another development, 1999 Constitution recognizes Islam as a religion for the Muslim citizens of Nigeria and their right to mundane and religious affairs are jealously protected by the section 38 (1):

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion of belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching practice and observance.

It can be deduced analogically that at this juncture the 1999 Constitution (as amended) has predicated the right of the Muslims to venture, enterprise in and marriage their affairs of Islamic banking and finance without any form of constitutional inhibition.

This constitutional position does not differ fundamentally from the position of *Shari’ah* on the Islamic banking and finance. All-the source *Shari’ah*, the Noble *Quran*, prophetic *Sunnah* and *Athar* (sayings) of the rightly guided ones had not specifically mentioned “banking” other than economic enterprises. This is another good reason to believe that the mere mention of “economic activities” is an express/implied inclusion of Islamic banking, non-banking financial institutional as well as their products and services.

Jurisprudential Justification of the Content and ‘Constitutionality’

The constitutionality of Islamic banking and non-banking financial institutions may have to be re-emphasized because of the narrowed provision of the Constitution. Jurisprudential, the words of the constitutions appear vague though but this only informs the restricted interpretation being accorded it by scholars, who are of the stand that the Constitution did/do not predetermine the inclusion of Islamic bank in any of its vast provisions. This is due to a proper link of the intention of the draftsman and the intended wide applicability. But to further drive this point home, Sanni observes on the construction of statute that “Legislations or Statutory instruments are not always clear and direct in their import-and where they are, questions may arise as to the competence of a person or body of

persons to do certain act within the letters of a Legislation or an enabling law and as to whether certain things come within the application of its provisions or exceptions created by it. These questions have no undisputable answers. They have evolved certain aids or guides in the interpretation or construction of statutes or legal writings in general over the years.”

There are two of those canons or maxims that aid the understanding of this how the comprehension of statute is attained. They are the *ejusdem generis* and *Expressio unis est exclusio alterius*. The former implies that “where there is a list of particular species which fall under an identical class followed by general words, the scope of the general words is restricted to things belonging to the class to which all the specific or particulars fall”. The latter connotes that “the express mention of one thing results in the exclusion of others.”

Given the above position, it will be conceded to that following the latter canon, the mention of “economic activities” is an irrepressible capture of banking and non-banking financial services. All these constitute economic activities outside the major economic sector.

From the former maxim, it is perceptible that the words “economic” and “activities” are mentioned *pari pasu*. The “activities” is a plural word that does not restrict its relevant applicability to any particular aspect of the economy but rather made a general expression. Likewise, the “economy” interprets to mean “the organization of money and resources within a nation or community, etc., especially in terms of production, distribution and consumption of goods and services”, “Economics, social science concerned with the production, distribution, exchange, and consumption of goods and services. Economists focus on the way in which individuals, groups, business enterprises, and governments seek to achieve efficiently any economic objective they select.” Hence, the scope is not pre-intended to be narrowed beyond any level that will exclude (Islamic) banking or jettisoned nonbanking financial institution or undermine the services and products floated by these institutions. Against this backdrop, it suffices to conclude that all the Constitution of the Federal Republic of Nigeria with the afore-mentioned provision have declined from not taking cognizance of the operation of Islamic banking, non-banking financial institutions as well as their products and services. The rule of this mode of interpretation is in tandem with the above quoted jurisprudential maxim of Shari’ah “The basic presumption is that all transactions are permissible unless they are prohibited by a text.”

Conclusion

Islamic Banking otherwise known as Shari’ah-compliant banking or Non-Interest banking in Nigeria is no fundamentally different from the other businesses. Each

business is to be operationally legalized by the supreme law of the land. This is the legal order in every jurisdiction, where economic activities take place. But the only legal instrument that is legislatively recognized to permit the operation of this kind of banking and financial services in the Nigeria jurisdiction is the Constitution does not recognize the operation of Islamic Banking appears to be an aberration to the legality enjoyed by its operation in Nigeria, as claimed by some scholars. This claim has therefore been reviewed and, it is discovered forthwith from all indications even though it is not expressly provided, Islamic Banking and financial services in its operation is duly recognized by the current constitutional regime and those that preceded it. Thus, the conclusion is that the sections of the three constitutions, which recognize economic activities generally, have contemplation for the constitutional legality of Islamic banking.

PART II

Selected Legislation

Chapter 15

Banks and Other Financial Institutions Act CAP B3 LFN, 2004

Arrangement of Sections

Part 1: Banks

Establishment of Banks Etc.

1. Functions, powers and duties of the Central Bank of Nigeria
2. Banking business
3. Application for grant of licence
4. Investment and release of prescribed minimum paid-up share capital
5. Power to revoke or vary conditions of licence
6. Opening and closing of branches.
7. Reconstructing, merger and disposal, etc., of bank
8. Operation of foreign banks in Nigeria
9. Minimum paid-up share capital requirement.
10. Shareholder's voting right to be proportional to shareholding
11. Restriction of legal proceedings in respect of shares held in the name of another
12. Revocation of licence
13. Minimum capital ratio
14. Non-compliance with capital ratio requirement
15. Minimum holding of cash reserves, specified liquid assets, special deposits and stabilization securities

Duties of Banks

16. Maintenance of reserve fund
17. Restriction on dividend
18. Disclosure of interest by directors, managers and officers.
19. Prohibition of employment of certain persons and interlocking directorship, etc.
20. Restriction on certain banking activities
21. Acquisition of shares in small and medium-scale industries, agricultural enterprises and venture capital companies
22. Restriction on operations of merchant banks
23. Display of interest rates

Books of Account

24. Proper books of account.
25. Returns of banks
26. Publication of consolidated statements.
27. Publication of annual accounts of banks
28. Contents and forms of accounts.
29. Appointment, power and report of approved auditor

Supervision

30. Appointment and power of Director of Banking Supervision and other examiners.
31. Routine examination and report thereon
32. Special examination
33. Special examination
34. Control of failing bank
35. Management of failing bank
36. Power of the Bank to revoke licence or apply to the court
37. Duty to notify bank or person to be affected
38. Application to the Federal High Court for winding-up

General and Supplemental

39. Restrictions on the use of certain names
40. General restriction on advertisement for deposits
41. Power of the President to proscribe trade union
42. Closure of bank during a strike
43. Prohibition of the receipt of commissions, etc. by staff of banks
44. Disqualification and exclusion of certain individuals from management of banks.
45. Offences by companies, etc. and by servant and agents.
46. Offences by directors and manager of banks
47. Penalties of offence not otherwise provided for
48. Jurisdiction of the Federal High Court
49. Protection against adverse claims.
50. Priority of local deposit liabilities
51. Exemptions
52. Exemption of community banks, etc.
53. Application of Companies and Allied Matters Act 1990.
54. Application of Nigeria Deposit Insurance Corporation Act 1988.
55. Power to make regulations.

Part II

Other Financial Institution

- 56. Prohibition of unlicensed financial institutions
- 57. Application for licence
- 58. Failure to comply with condition of licences.
- 59. Supervisory power of the Bank

Part III

Miscellaneous and Supplementary

- 60. Failure to comply with rules, etc.
- 61. Interpretation
- 62. Citation and repeal

Banks and other Financial Institutions Act 1991**Laws of the Federation of Nigeria**

The Federal Military Government hereby Acts as follows:

Part 1: Banks

Establishing of Banks, Etc.

- 1. (1) The Central Bank of Nigeria (hereafter in this Act referred to as “the Bank”) shall have all the functions and powers conferred and the duties imposed on it by this Act.
- (2) The Bank shall in addition to the functions and powers conferred on it by this Act, have the functions and powers conferred and the duties imposed on the Bank by the Central Bank of Nigeria Act 1991.
- (3) The Bank may authorize or instruct any officer or employee of the Bank to perform any of the functions, exercise any powers, or discharge any of its duties under this Act.
- (4) The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties under this Act, or to exercise, perform or discharge the functions and duties on behalf and in the name of the Bank.
- (5) For the purposes of this Act, a person shall be deemed to be receiving money as deposits -
 - (a) If the person accepts deposit from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit;
 - (b) notwithstanding that it receives monies and deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof

either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable.

- (6) Notwithstanding anything contained in this section to the contrary, the receiving of monies against any issue of shares and debentures offered to the public in accordance with any enactment in force within the Federation shall not be deemed to constitute receiving monies as deposits for the purposes of this Act.
2. (1) No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act.
- (2) Any person who transacts banking business without a valid licence under this Act is guilty of an offence and liable on conviction to a term of imprisonment not exceeding 10 years or a fine exceeding N500,000 or to both such imprisonment and fine.
3. (1) Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor for the grant of a licence and shall accompany the application with the following-
 - (a) feasibility report of the proposed bank;
 - (b) a draft copy of the memorandum and articles of association of the proposed bank;
 - (c) a list of the shareholders, directors and principal officers of the proposed bank and their particulars;
 - (d) the prescribed application fee; and
 - (e) such other information, documents and reports as the Bank may, from time to time, specify.
- (2) After the applicant has provided all such information, documents and report as the Bank may require under subsection (1) of this section, the shareholders of the proposed bank shall deposit with the Bank a sum equal to the minimum paid-up share capital that may be applicable under section 9 of this Act.
- (3) Upon the payment of the sum referred to in subsection (2) of this section, the Governor may issue a licence with or without conditions or refuse to issue a licence and the Governor need not give any reasons for the refusal.
- (4) Where an application for a licence is granted, the Bank shall give written notice of that fact to the applicant and the licence fee shall be paid.
4. The Bank may invest any amount deposited with it pursuant to section 3(2) of this Act in treasury bills or such other securities until such a time

as the Governor shall decide whether or not to grant a licence, and where the licence is not granted the Bank shall repay the sum deposited to the applicant, together with the investment income after deducting administrative expenses and tax on the income.

5. (1) Except as provided in section 9(2) of this Act, the Governor may vary or revoke any condition subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.
 - (2) Where the grant of a licence is subject to conditions, the bank shall comply with those conditions to the satisfaction of the Bank within such period as the Bank may deem appropriate in the circumstances.
 - (3) Any bank which fails to comply with any of the conditions of its licence is guilty of an offence under this section and shall be liable on conviction to a fine not exceeding ₦1,000 for each day during which the condition is not complied with.
 - (4) Where the Governor proposes to vary, revoke or impose fresh or additional conditions on a licence, he shall, before exercising such power, give notice of his intention to the bank concerned and give the bank an opportunity to make a representation to him thereon.
 - (5) Any bank which fails to comply with any fresh or additional condition imposed in relation to its licence is guilty of an offence and liable on conviction to a fine of ₦100,000 and where the offence continues, to an additional fine of ₦1,000 for each day during which the offence continues.
6. No bank may open or close any branch office anywhere within or outside Nigeria except with the prior consenting writing of the Bank.
 7. Except with the prior consent of the Governor, no bank shall enter into an agreement or arrangement-
 - (a) which results in a change in the control of the bank;
 - (b) for the sale, disposal or transfer howsoever of the whole or any part of the business of the bank;
 - (c) for the amalgamation or merger of the bank with any other person;
 - (d) for the reconstruction of the bank;
 - (e) to employ a management agent or to transfer its business to any such agent.
 8. (1) Except with the approval of the Bank, no foreign bank shall operate a representative office in Nigeria.
 - (2) Any person who contravenes subsection (1) of this section or section 7 of this Act is guilty of an offence and liable on conviction to a fine of

₦100,000 and in the case of a continuing offence to an additional fine of ₦10,000 for each day during which the offence continues.

9. (1) The President on the recommendation of the Bank shall, from time to time, determine, as he may deem appropriate, the minimum paid-up share capital of each category of banks.
- (2) Subject to subsection (1) of this section, the minimum paid-up share capital of a bank shall in respect of-
 - (a) a commercial bank, be ₦50,000,000;
 - (b) a profit and loss sharing bank, be ₦50,000,000;
 - (c) a merchant bank, be ₦40,000,000;
 - (d) a community bank, be ₦250,000.
- (3) Any failure to comply with the provisions of this section within 12 months from the date of this Act shall be a ground for the revocation of any licence issued pursuant to the provisions of this Act or any other Act repealed by it.
10. Notwithstanding the provisions of the Companies and Allied Matters Act 1990 or any agreement or contract, the voting rights of every shareholder in a bank shall be proportional to his contribution to the paid-up share capital of the bank.
11. Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other than the registered holder:
 Provided that nothing in this section shall bar a suit or other proceeding on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.
12. The Governor may, with the approval of the President by notice published in the Gazette, revoke any licence granted under this Act if a bank-
 - (a) ceases to carry on in Nigeria the type of banking business for which the licence was issued for any continuous period of 6 months or for any period aggregating 6 months during a continuous period of 12 months;
 - (b) goes into liquidation or is wound up or otherwise dissolved;
 - (c) fails to fulfil or comply with any condition subject to which the licence was granted;
 - (d) has insufficient assets to meet its liabilities;
 - (e) fails to comply with any obligation imposed upon it by or under this Act or the Central Bank of Nigeria Act 1991.

13. (1) A bank shall maintain; at all times, capital funds unimpaired by losses, in such ratio to all or any assets or to all or any liabilities or to both such assets and liabilities of the bank and all its offices in and outside Nigeria as may be specified by the Bank.
(2) Any bank which fails to observe any such specified ratios may be prohibited by the Bank from-
 - (a) advertising for or accepting new deposits;
 - (b) granting credit and making investment;
 - (c) paying cash dividend to shareholders;(3) In addition, the bank may be required to draw up within a specified time a capital reconstitution plan acceptable to the Bank.
14. (1) Failure to comply with the provisions of section 13 of this Act may constitute a ground for the revocation of the licence of the bank under this Act.
(2) Where the Bank proposes to recommend to the President, the revocation of the licence of any bank pursuant to subsection (1) of this section, the Bank shall give notice of its intention to the bank and the bank may within 30 days make representation (if any) in respect thereof.
(3) Any bank dissatisfied with the decision of the Bank to recommend the revocation of its licence under this section may, within 14 days of the decision being communicated to it, appeal against such decision through the Bank to the President.
(4) The President may reject or approve the recommendation of the Bank with such modification as he may deem fit.
15. (1) Every bank shall maintain with the Bank cash reserves, and special deposits and hold specified liquid assets or stabilization securities, as the case may be, not less in amount than as may, from time to time, be prescribed by the Bank by virtue of section 39 of the Central Bank of Nigeria Act 1991.
(2) Where both assets and liabilities are due from and to other banks, they shall be offset accordingly, and any surplus of assets or liabilities shall be included or deducted, as the case may be, in computing specified liquid assets.
(3) In the case of the long-term advances to a bank or by an overseas branch or office of a bank, the advances may, with the approval of the Bank, be excluded from the demand liabilities of the bank.
(4) Every bank shall -
 - (a) furnish within a reasonable time any information required by the Bank to satisfy the Bank that the bank is observing the requirements of subsection (1) of this section;

- (b) not allow its holding of cash reserves, specified liquid assets, special deposits and stabilization securities to be less than the amount which may, from time to time, be prescribed by the Bank;
- (c) not during the period of any deficiency grant or permit increases in advances, loans or credit facilities to any person without the prior approval in writing of the Bank.
- (6) Any bank which fails to comply with any of the provisions of subsection (4) of this section is guilty to an offence and liable on conviction to a fine of-
 - (a) in the case of paragraph (a) ₦50,000 for every day during which a default under that paragraph (a) exists;
 - (b) in the case of paragraph (b), one per cent of the shortfall for each day during which the deficiency under that paragraph exists;
 - (c) in the case of paragraph (c), ₦500,000 for every offence under that paragraph; and the Bank may also, during the period when the bank fails to comply with any of the requirements of subsection (4) as aforesaid, withdraw any privileges or facilities that are nor accorded to the bank.
- (6) For the purposes of this section, specified liquid assets provided they are freely transferable and free from any lien or charge of any kind shall, without prejudice to the provisions of section 39 of the Central Bank of Nigeria Act 1991, consist of all or any of the following, that is-
 - (a) currency notes and coins which are legal tender in Nigeria;
 - (b) balances at the Bank;
 - (c) net balances at any licensed bank (excluding uncleared effects) and money at call in Nigeria;
 - (d) Treasury Bills and Treasury Certificates issued by the Federal Government;
 - (e) inland bills of exchange and promissory notes rediscountable at the Bank;
 - (f) stocks issued by the Federal Government with such dates of maturity as may be approved by the Bank;
 - (g) negotiable certificates of deposit approved by the Bank; and
 - (h) such other negotiable instruments as may, from time to time, be approved by the Bank for the purpose this subsection.

Duties of Banks

16. (1) Every bank shall maintain a reserve fund and shall, out of its net profits for each year (after due provision made for taxation) and before any dividend is declared, where the amount of the reserve fund is-
 - (a) less than the paid-up share capital, transfer to the reserve fund a sum equal not less than thirty per cent of the net profits; or

- (b) equal to or in excess of the paid-up share capital, transfer to the reserve fund a sum equal to not less than fifteen per cent of the net profit:
Provided that no transfer under this subsection shall be made until all identifiable losses have been made good.
- (2) Any bank which fails to comply with the provisions of subsection (10) of this section is guilty of an offence and liable on conviction to a fine of ₦500,000.
- (3) Notwithstanding paragraphs (a) and (b) of subsection (10) of this section, the Bank may, from time to time, specify a different proportion of the net profits of each year, being either lesser or greater than the proportion specified in paragraphs (a) and (b) to be transferred to the reserve fund of a bank for the purpose of ensuring that the amount of the reserve fund of such bank is sufficient for the purpose of its business and adequate in relation to its liabilities.
17. No bank shall pay dividend on its shares until-
- (a) all its preliminary expenses, organizational expenses, shares selling commission, brokerage, amount of losses incurred and other capitalized expenses not represented by tangible assets have been completely written off;
 - (b) adequate provisions have been made to the satisfaction of the Bank for actual and contingent losses on risk assets, liabilities, off balance sheet commitment and such unearned incomes as are derivable there from;
 - (c) it has complied with any capital ratio requirement as specified by the Bank pursuant to section 13(1) of this Act.
18. (1) No manager or any other officer of a bank shall-
- (a) in any manner whatsoever, whether directly or indirectly have personal interest in any advance, loan or credit facility; and if he has any such personal interest, he shall declare the nature of his interest to the bank;
 - (b) grant any advance, loan or credit facility to any person, unless it is authorised in accordance with the rules and regulations of the bank; and where adequate security is required by such rules and regulation; such security shall, prior to the grant, be obtained for the advance, loan or credit facility and shall be deposited with the bank;
 - (c) benefit as a result of any advance, loan or credit facility granted by the bank.
- (2) Any manager or officer who contravenes or fails to comply with any of the provisions of subsection (1) of this section is guilty of an offence under this section and liable on conviction to a fine of ₦100,000 or to imprisonment for a term of 3 years; and in addition, any gain or benefits, accruing to any

person convicted under this section by reason of such contravention, shall be forfeited to the Federal Government, and the gains or benefit shall vest accordingly in that Government.

- (3) Every director of a bank who has any personal interest, whether directly or indirectly, in an advance, loan or credit facility, or proposed advance, loan or credit facility from that bank, shall, as soon as practicable, declare the nature of his interest to the board of directors of the bank, and the secretary of the bank shall cause such declaration to be circulated forthwith to all directors.
- (4) The provisions of subsection (3) of this section shall not apply in any case-
 - (a) where the interest of the director consists only of being a member holding less than 5% of the shares of a company which is seeking an advance, loan or credit facility from the bank; or
 - (b) if the interest of the director may properly be regarded by the Bank as not being material.
- (5) For the purpose of subsection (3) of this section, a general notice given to the board of directors of a bank by a director of such bank to the effect that he is-
 - (a) an officer or member holding 5% or more of the shares of a company or firm specified in the notice; and
 - (b) to be regarded as having personal interest in any advance, loan or credit facility which may after the date of the notice, be made to that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any such advance, loan or credit facility, if-
 - i. The notice specifies the nature and extent of his interest in the company or firm;
 - ii. The interest is not different in nature to or greater in extent than the nature and extent specified in the notice at the time the advance, loan or credit facility is made; and
 - iii. The notice is given at the meeting of the board of directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board of directors after it is given.
- (6) Every director of a bank who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be declare at a meeting of the board of directors of the bank, the fact and the nature, character and extent of the interest;
- (7) The declaration referred to in subsection (6) of this section shall be made at the first meeting of the board of directors held-
 - a) After he became a director of the bank; or

- b) If already a director, after he came into possession of the property.
- (8) The secretary of the bank shall cause to be brought up and read, any declaration made under subsection (3) and (6) of this section at the next meeting under this section in the minutes of the meeting at which it was made or at the meeting in which it was brought up and read.
- (9) Any director who contravenes subsection (3) or (6) of this section is guilty of an offence under this section and liable on conviction to a fine ~~₦~~100,000 or to imprisonment for 3 years or to both such fine and imprisonment.
- 19. (1) No bank shall-
 - a) Employ or continue to the employment of any person who is at any time has been adjudged bankrupt or has suspended payment to or has compounded with his creditors or who is or has been convicted by a court for an offence involving fraud or dishonesty, or professional misconduct;
 - b) Be managed by a management except as may approved by the Bank.
- (2) Except with the approval of the Bank, no bank shall a director any who is a director of-
 - a) Any other bank;
 - b) Companies which among themselves are entitled to exercise voting right in excess of ten per cent of the total voting right of all the shareholders of the bank.
- (3) No bank shall be managed by a person who is-
 - a) A director of any other company not being a subsidiary of the bank; or
 - b) Engaged in any other business or vocation
- (3) No bank shall be managed by a person who is-
 - a) A director of any other company not being a subsidiary of the bank; or
 - b) Engaged in any other business or vocation.
- (4) Every director of a bank shall sign a code of conduct in such form or manner as the Bank may, from time to time, prescribe.
- (5) The chief executive of a bank shall cause all the officers of the bank to sign a code of conduct as may be approved by the board of directors.
- 20. (1) A bank shall not, without the prior approval in writing of the, grant-
 - a) To any person any advance, loan or credit facility or give any financial guarantee or incur any other liability on behalf of any person so that the total value of the advance, loan credit facility, financial guarantee or any other liability in respect of the person is at any time more than twenty per cent of the shareholders fund unimpaired by losses or in the case of a merchant bank not more than fifty per cent of its shareholders fund unimpaired by losses; and for the purpose of this paragraph all advances, loans or credit facilities extended to any person shall be aggregated and

shall include all advances, loan or credit facilities extended to any subsidiaries or associates of a body corporate:

Provided that the provisions of this paragraph shall not apply to transactions between banks or between branches of a bank or to the purchase of clean or documentary bills of exchange, telegraphic transfers or documents of title to goods the holder of which is entitled to payment of exports from Nigeria to advance made against such bills, transfers or documents;

- b) Any advance, loan or credit facilities against the security of its own shares or any unsecured advances, loan or credit facilities unless authorized in accordance with the bank's rules and regulations and where any such rules and regulations require adequate security, such security shall be provided or, as the case may require, deposited with the bank.
- (2) A bank shall not, without the prior approval in writing of the prior approval in writing of the bank-
- a) Permit to be outstanding, unsecured advance, loan or unsecured credit facilities, of an aggregate amount in excess of ₦50,000-
 - (i) to its directors or any of them whether such advances, loan or credit facilities are obtained by its directors jointly or severally;
 - (ii) to nay firm, partnership or private company in which it or any one or more of its directors is interested as director, partner, manager or agent or any individual firm, partnership or private company of which any of its directors is a guarantor;
 - (iii) to any public company or private company in which or anyone or more of its directors jointly or severally maintains shareholding of not less than five per cent either directly or indirectly;
 - (b) Permit to be outstanding to its officers and employees unsecured advances, loans or unsecured credit facilities, which in the aggregate for any one officer or employee, is an amount which exceeds one year's emolument to such officer or employee;
 - (c) engage, whether on its own account or on a commission basis, in wholesale or retail trade, including the import or export trade, except in so far as may exceptionally be necessary in the course of the banking operations and services of that bank or in the course of the satisfaction of debts due to it; so however that nothing in this paragraph shall be construed as precluding a bank from undertaking equipment leasing business or debt factoring provided that the foregoing provisions of this paragraph shall not apply to a bank in the circumstances permitted under section 21 of this Act;

- (d) without prejudice to the provision of section 21 of this Act, acquire or hold any part of the share capital of any financial or commercial or other undertaking except-
- (i) any shareholding approved by the Bank in any company set up for the purpose of promoting the development of the money market or capital market in Nigeria or of improving the financial machinery for financing economic development;
- (ii) any shareholding approved by the Bank pursuant to sub-paragraph (i) of this paragraph, the aggregate value of which does not at any time exceed twenty-five per cent of the sum of paid-up share capital and statutory reserves of that bank;
- (iii) all shareholding acquired by a merchant bank while managing an equity issue;

Provided that the aggregate value of such acquisition does not at any time exceed the sum of the paid-up share capital of that merchant bank or ten per cent of its total asset, excluding contract items, whichever is higher and that this paragraph shall not apply to any nominee company of a bank which deals in stock and shares for or on behalf of the bank's customers or clients or majority interests acquired by a merchant bank in a company while managing an equity issue;

- (e) Remit, either in whole or in part, the debts owed to it by any of its directors or past directors;
 - (f) Purchase, acquire or lease real estate except as may be necessary for the purpose of conducting its business including for foreseeable future expansion or housing of its staff or other exceptional circumstances, where the agreement of the Bank is obtained;
 - (g) sell, dispose or lease out any real estate.
- (3) Notwithstanding the foregoing provisions of this section, a bank may secure debt on any real or other property, and in default of repayment, may acquire such property and exercise any power of sale, as may be provided for in any instrument or, by law prescribed, immediately upon such default or soon thereafter as may be deemed proper.
- (4) In paragraph (a) and (b) of subsection (2) of this section, the expressions "unsecured advances and loans" or "unsecured credit facilities", mean advance
- (5) In paragraphs (a) and (e) of subsection (2) of this section, the expression "director" includes director's wife, husband, father, mother, brother, sister, son, daughter and their spouses.

- (6) All the directors of a bank shall be liable jointly and severally to indemnify the bank against any loss arising from any unsecured advances, loans or credit facilities under paragraph (a) of subsection (2) of this section.
 - (7) Any bank which, after the commencement of this Act, enters into any transaction inconsistent with any of the provisions of subsection (1) and (2) of this section is guilty of an offence and liable on conviction to a fine of ₦1,000 for each day during which any such transaction continues.
 - 21. (1) A bank may acquire or 'hold part of the share capital of any agricultural, industrial or venture capital company subject to the following conditions, that is-
 - a) The venture capital company is set up for the purpose of promoting the development of indigenous technology or new venture in Nigeria;
 - b) The shareholding by the bank is small or medium-scale industries and agricultural enterprises as defined by the Bank;
 - c) The shareholding by the bank in any medium scale industry, agricultural enterprise or venture capital company or any other business approved by the Bank shall not be more than per cent of share capital of the company, the shares of which are acquired or held;
 - d) The aggregate value of the equity participation of the bank in all enterprises pursuant to this section does not, at any time, exceed in the case of a commercial bank, twenty per cent of its shareholders fund unimpaired by losses:
- Provided that a bank may hold shares acquired in the course of the satisfaction of any debt owed to it.
- (2) Without prejudice to the provisions of subsection (1) of this section, a bank may hold or acquire share capital of any other business, subject to the approval of the Bank.
 - (3) Every bank shall, within 21 days of the acquisition of any shareholding pursuant to subsection (1) of this section, give full particulars thereof to the Bank.
 - (4) Any bank which fails to comply with the provisions of subsection (3) of this section is guilty of an offence and liable on conviction to a fine ₦1,000 for each day during which the offence continues.
 - 22. (1) A merchant bank shall not-
 - a) Accept any deposit withdrawable by cheque;
 - b) Accept any deposit below an amount which shall be prescribed, from time to time by the bank;
 - c) Hold for more than six months any equity interest acquired in a company while managing an equity issue except as stipulated in section 21 of this Act.

- (2) Any merchant bank which acts in contravention of or fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine ₦10,000 for each day during which the offence continues.
- 23. (1) Every bank shall display at its lending and deposit interest rate and shall render the Bank information on such rates as may be specified, from time to time, by the Bank;
- (2) Any bank found in breach of any of the provisions of this section is guilty of an offence and liable on conviction to a fine of ₦1,000 for every day during which the offence continues.

Books of Account

- 24. (1) Every bank shall cause to be kept proper books of account with respect to all the transactions of the bank.
- (2) For the purpose of subsection (1) of this section, proper books of account shall be deemed to be kept with respect to all transactions if such books are necessary to explain such transactions and give a true and fair view of the state of affairs of a bank are kept by the bank and are in compliance with the accounting standard as may be prescribed for banks.
- (3) The books of account shall be kept at the principal administrative office of a bank and at the branches of each bank in the English language or any other language approved by the Federal Government.
- (4) Where the books of account, kept by a bank with respect to all its transactions, are prepared and kept in such a manner that, in the opinion of the bank, have not been properly prepared and kept or where a bank renders in return in accordance with the provision with section 25 of this Act, which in the opinion of account or render accurate returns, as the case may be, for the bank and the cost of preparing the accounts and rendering the returns shall be borne by the bank.
- (5) If any person being a director, manager or officer of a bank-
 - (a) Fails to take all reasonable steps to secure compliance with any of the provisions of this section;
 - (b) has by his wilful act been the cause of any default thereof by the bank, he is guilty of an offence and liable to conviction, in respect of paragraph (a) of this subsection, to a fine of ₦10,000 or to imprisonment for five years or to both such fine and imprisonment; and in respect of paragraph (b) of this section, to a fine of ₦50,000 or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.
- 25. (1) Every bank shall submit to the bank not later than 28 days after the last day of each month or such other interval as the bank may specify, a statement showing-

- (a) The assets and liabilities of the bank; and
 - (b) An analysis of advances and other assets, as its head office and branches in and outside Nigeria in such form as the bank may specify, from time to time.
26. (1) The statements and information submitted by each bank under section 25 of this Act shall be regarded a confidential:
- Provided that the bank shall furnish any such statement or information to any agency of Government as required by the law.
- (2) Notwithstanding anything in this section, the Bank may prepare and publish consolidated statements aggregating the statements furnished under section 25 of this Act for each category of banks.
27. (1) subject to the prior approval in writing of the bank, a bank shall not later than 4 months after the end of its financial year-
- (a) Cause to be published in a daily newspaper printed in and circulating in Nigeria and approved by the bank
 - (b) Exhibit in a conspicuous position in each of its offices and branches in Nigeria; and
 - (c) Forward to the bank, copies of the bank's balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the bank.
- (2) Every published account of a bank, under subsection (1) of this section, shall disclose in detail penalties paid as a result of contravention of the provisions of this Act and provisions of any policy guidelines in force during the financial year in question and the auditor's report shall reflect such contravention.
 - (3) The balance sheet and profit and loss account of a bank shall bear on their face the report of an approved auditor and shall contain statements on such matters as may be specified by the bank, from time to time.
 - (4) for the purpose of subsection (3) of this section, an "approved auditor" shall be auditor approved for the purpose of section 29 of this Act.
 - (5) Any bank which fails to comply with any of the requirements of this section is in respect of each such failure guilty of an offence and liable to conviction to a fine of ₦100, 000
28. (1) Every balance sheet and every profit and loss account of a bank shall give a true and fair view.
- (2) For the purpose of subsection (1) of this section, proper books of account shall be deemed to be kept with respect to all transactions if such books as are necessary to explain such transactions and give a true and fair view of the state of affairs of a bank are kept by the bank and are in compliance with the accounting standard as may be prescribed for banks.

- (3) The books of account shall be kept at the principal administrative office of a bank and at the branches of each bank in the English language or any other language approved by the Federal Government.
 - (4) Where the books of account, kept by a bank with respect to all its transactions, are prepared and kept in such a manner that, in the opinion of the Bank, have not been properly prepared and kept, or where a bank renders returns in accordance with the provisions of section 25 of this Act, which in the opinion of the Bank are inaccurate, the Bank may appoint a firm of qualified accountants to prepare proper books of account or render accurate returns, as the case may be, for the bank and the cost of preparing the accounts and rendering the returns shall be borne by the bank.
 - (5) If any person being a director, manager or officer of a bank-
 - (a) fails to take all reasonable steps to secure compliance with any of the provisions of this section;
 - (b) has by his wilful act been the cause of any default thereof by the bank, he is guilty of an offence and liable on conviction, in respect of paragraph (a) of this subsection, to a fine of ₦10,000 or to imprisonment for 5 years or to both such fine and imprisonment; and, in respect of paragraph (b) of this section, to a fine of ₦50,000 or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.
- 25.(1) Every bank shall submit to the Bank not later than 28 days after the last day of each month or such other interval as the Bank may specify, a statement showing-
- (a) the assets and liabilities of the bank; and
 - (b) an analysis of advances and other assets, at its head office and branches in and outside Nigeria in such form as the Bank may specify, from time to time.
- (2) Every bank shall submit such other information, documents, statistics or returns as the Bank may deem necessary for the proper understanding of the statements supplied under subsection (1) of this section.
- (3) Any bank which fails to comply with any of the requirements of subsection (1) or (2) of this section is, in respect of each such failure, guilty of an offence under this Act and liable on conviction to a fine of ₦5,000 for each day during which the offence continues.
26. (1) The statements and information submitted by each bank under section 25 of this Act shall be regarded a confidential:
- Provided that the Bank shall furnish any such statement or information to any agency of Government as required by law.

- (2) Notwithstanding anything in this section, the Bank may prepare and publish consolidated statements aggregating the statements furnished under section 25 of this Act for each category of banks.
27. (1) Subject to the prior approval in writing of the Bank, a bank shall not later than 4 months after the end of its financial year-
 - (a) cause to be published in a daily newspaper printed in and circulating in Nigeria and approved by the Bank;
 - (b) exhibit in a conspicuous position in each of its offices and branches in Nigeria; and
 - (c) forward to the Bank, copies of the bank's balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the bank.
- (2) Every published account of a bank, under subsection (1) of this section, shall disclosed in detail penalties paid as a result of contravention of the provisions of this Act and provisions of any policy guidelines in force during the financial year in question and the auditor's report shall reflect such contravention.
- (3) The balance sheet and profit and loss account of a bank shall bear on their face the report of an approved auditor and shall contain statements on such matters as may be specified by the Bank, from time to time.
- (4) For the purpose of subsection (3) of this section, an "approved auditor" shall be an auditor approved for the purpose of section 29 of this Act.
- (5) Any bank which fails to comply with any of the requirements of this section is in respect of each such failure guilty of an offence and liable on conviction to a fine of ₦100,000.
28. (1) Every balance sheet and every profit and loss account of a bank shall give a true and fair view of the state of affairs of the bank as at the end of the reporting period.
- (2) Every balance sheet and every sheet profit and loss account of a bank forwarded to the Bank in accordance with the provisions of subsection (1) of this section and section 27(1) (c) of this Act shall comply with the requirements of any circular which has been issued by the Bank thereon.
- (3) Any person being a director of any bank who fails to take all reasonable steps to secure compliance with any of the provisions of this section in respect of any accounts is guilty of an offence and liable on conviction to a fine of any account is guilty of an offence and liable on conviction to a fine of ₦10,000 or to imprisonment for 5 years or to both such fine and imprisonment.
29. (1) Every bank shall appoint annually a person approved by the Bank, in this section referred to as "the approved auditor" whose duties shall be to make to the shareholders a report upon the annual balance sheet and profit and loss

account of the bank and every such report shall contain statement as to the matters and such other information as may be prescribed, from time to time, by the Bank.

- (2) For the purpose of this section, the approved auditor shall be an auditor who is-
 - (a) a member of one of the professional bodies recognised in Nigeria;
 - (b) approved by the Bank;
 - (c) resident in Nigeria; and
 - (d) carrying on in Nigeria professional practice as accountant and auditor.
- (3) Any person -
 - (a) having any interest in a bank otherwise than as a depositor; or
 - (b) who is a director, officer or agent of a bank; or
 - (c) which is a firm in which a director of a bank has any interest as partner or director; or
 - (d) who is indebted to a bank, shall not be eligible for appointment as the approved auditor for any bank.
- (3) and a person appointed as such auditor who subsequently-
 - i. acquires such interest; or
 - ii. becomes a director, officer or agent of that bank; or
 - iii. becomes indebted to a partner in a firm in which a director of a bank is interested as partner or director, shall cease to be such auditor.
- (4) If any bank-
 - a. fails to appoint an approved auditor under subsection (1) of this section; or
 - b. at any time, fails to fill a vacancy for such person, the Bank shall appoint a suitable person for that purpose and shall fix the remuneration to be paid by the bank to such auditor.
- (5) Every auditor of a bank shall have a right of access at all times to the books, accounts and vouchers of the bank and shall be entitled to require from directors, managers and officers of the bank such information and explanation as he thinks necessary for the performance of his duties under this Act.
- (6) The report of the approved auditor shall be read together with the report of the board of directors at the annual general meeting of the shareholders of the bank and two copies of each report together with the auditor's analysis of bad and doubtful advances in a form specified, from time to time, by the Bank shall be sent to the Bank.
- (7) If any auditor appointed under this section, in the course of his duties as an auditor of a bank, is satisfied that -
 - (a) there has been a contravention of this Act, or that an offence under any other law has been committed by the bank or any other person; or

- (b) losses have been incurred by the bank which substantially reduce its capital funds: or
- (c) any irregularity which jeopardizes the interest of depositors or creditors of the bank, or any other irregularity has occurred; or
- (d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the bank, he shall immediately report the matter to the Bank.
- (8) The approved auditor shall forward to the Bank two copies of the domestic reports on the bank's activities not later than three months after the end of the bank's financial year.
- (9) Any approved auditor under this section who acts in contravention of or fails deliberately or negligently to comply with any of the provision of this section is guilty of an offence and liable on conviction to a fine of not less than ₦50,000 and the Bank may, in addition, take other appropriate actions against such an auditor as it deems necessary.
- (10) The appointment of an approved, auditor shall not be determined without prior approval of the Bank.

Supervision

- 30. (1) There shall be an officer of the Bank who shall be appointed by the Governor to be known as the Director of Banking Supervision or by such other title as the Governor may specify.
- (2) The Director of Banking Supervision shall have power to carry out supervisory duties in respect of banks and for that purpose shall -
 - (a) under conditions of confidentiality, examine periodically the books and affairs of each bank;
 - (b) have a right of access at all times to the books, accounts and vouchers of banks;
 - (c) have power to require from directors, managers and officers of banks such information and explanation as he deems necessary for the performance of his duties under this section.
- (3) The Governor shall appoint to assist the Director of Banking Supervision such other officers of the Bank as the Governor may, from time to time, decide.
- (4) The officers may be designated examiners or have such other titles as the Governor may specify.
- (5) For the purpose of this section, references to examiners are references to the Director of Banking Supervision and any officer of the Bank appointed pursuant to subsection (3) of this section.
- (6) In examining the affairs of any bank under this Act, it shall be the duty of an examiner at all times to avoid unreasonable hindrance to the daily business of the bank.

- (7) Every bank shall produce to the examiners at such times as the examiners may specify, all books, accounts, documents and information which they may require.
- (8) If any book, document or information is not produced in accordance with the requirement of an examiner under this section or what is produced or furnished to an examiner is false in any material particular, the bank is guilty of an offence and liable on conviction to a fine of ₦50,000 and in addition, to a fine of ₦1,000 for each day during which the offence continues.
31. (1) The Governor shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Bank, to the bank concerned with instruction that it be placed before the meeting of the board of directors of the bank specially convened for the purpose of considering the report and the recommendations thereon.
- (2) The bank shall within 2 weeks convey to the Governor the board of directors' reactions to the report and its proposal for implementing the recommendations of the Bank.
- (3) Any bank which fails to comply with the provisions of subsection (1) or (2) of this section is guilty of an offence and liable on conviction to a fine of ₦500 for each day during which the offence continues and if the offence continues for more than 60 days, the Bank may in addition to the fine, withdraw any privilege or facility granted to that bank by the Bank.
32. (1) The Governor shall have power to order a special examination or investigation of the books and affairs of a bank where he is satisfied that -
- (a) it is in the public interest so to do; or
 - (b) the bank has been carrying on its business in a manner detrimental to the interest of its depositors and creditors; or
 - (c) the bank has "insufficient" assets to cover its liabilities to the public; or
 - (d) the bank has been contravening the provisions of this Act; or
 - (e) an application is made therefore by-
 - i. a director or shareholder of the bank; or
 - ii. a 'depositor or creditor of the bank;
- Provided that in the case of paragraph (e) of this subsection, the Governor may not order a special examination or investigation of the books and affairs of a bank if he is satisfied that it is not necessary to do so,
- (2) For the purpose of subsection (1) of this section, the Governor shall have power to appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of the bank.

- (3) Nothing in this section or in any other section of this Act shall be construed as precluding the Governor from appointing one or more officers of the Bank as examiner apart from those mentioned in section 30 of this Act and ascribing to such officers such other designations as he deems fit, and from directing or requiring all or any of the officers to exercise all or any of the powers of the Director of Banking Supervision under this Act.
- (4) The Governor shall have power to order that all expenses of or incidental to an examination or investigation be paid by the bank examined or investigated.
- 33. (1) Where a bank informs the Bank that -
 - (a) it is likely to become unable to meet its obligations under this Act; or
 - (b) it is about to suspend payment to any extent; or
 - (c) it is insolvent; or
 - (d) where, after an examination under section 32 of this Act or otherwise howsoever, the Bank is satisfied that the bank is in a grave situation as regards the matter referred to in section 32(1) of this Act, the Governor may by order in writing exercise any one or more of the power specified in subsection (2) of this section.
- (2) The Governor may by order in writing under subsection (1) of this section-
 - (a) prohibit the bank from extending any further credit facility for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the aforesaid period;
 - (b) require the bank to take any steps or any action or to do or not to do any act or thing whatsoever, in relation to the bank or its business or its directors or officers which the Bank may consider necessary and which is set out in the order, within such time as may be stipulated therein;
 - (c) with the approval of the President, remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the bank, notwithstanding anything in any written law, or any limitations contained in the memorandum and articles of association of the bank;
 - (d) in respect of a bank, notwithstanding anything in any written law or any limitations contained in the memorandum and articles of association of the bank, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, for reason to be recorded in writing -
 - i) remove from office, with effect from such date as may be set out in the order, any director of the bank; or

- ii) appoint any person or persons as a director or directors of the bank, and provide in the order for the person or persons so appointed to be paid by the bank such remuneration as may be set out in the order;
 - (e) appoint any person to advise the bank in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the bank such remuneration as may be set out in the order.
34. (1) If, after taking such of the steps stipulated in section 33 of this Act as in the opinion of the Governor may be appropriate in the circumstance, the state of affairs of the bank concerned does not improve significantly, the Bank may, with the approval of the President, assume control of the whole of the property and affairs of the bank, carry on the whole of its business and affairs or assume control of such part of its property, business and affairs as the Bank considers necessary or appoint persons to do so on behalf of the Bank.
- (2) Where the Bank or an appointed person has assumed control of the business of a bank in pursuance of subsection (1) of this section, the bank shall submit its business to the control of the Bank and shall provide the Bank or appointed person with such facilities as the Bank or the appointed person may require to carry on the business of the bank and notwithstanding the provisions of this section, all banks shall co-operate with the Bank at all times.
- (3) Any bank which fails to comply with the provisions of subsection (2) of this section or with any requirements of the Bank or an appointed person under subsection (1) of this section, is guilty of an offence and liable on conviction to a fine of ₦50,000 and, in addition, to a fine not exceeding ₦500 for each day during which the default continues
35. (1) Where the Bank or an appointed person has assumed control of the business of a bank in pursuance of section 34 of this Act, the Bank or an appointed person shall remain in control of and continue to carry on the business of the bank in the name and on behalf of the bank until such time as-
- a. the Bank is satisfied that adequate provision has been made for the repayment of deposits;
 - b. in the opinion of the Bank, it is no longer necessary for the Bank to remain in control of the business of the bank.
- (2) The cost and expenses of the Bank or the remuneration of an appointed person, as the case may be, shall be payable from the funds and properties of the bank as a first charge on the funds of the bank.
36. Notwithstanding anything contained in any law or memorandum and articles of association of a bank, where the Bank or an appointed person has, pursuant to an order under section 34 of this Act assumed control of a bank whose paid-

up capital is lost or unrepresented by available assets, the Bank may, with the approval of the President-

- (a) apply to the Federal High Court for an order for the Bank or a person nominated by the Bank to purchase or acquire the bank for a nominal fee for the purpose of its restructuring and subsequent sale;
 - (b) make an order revoking the bank's licence and requiring its business to be wound-up.
37. (1) No order under sections 33 and 36 of this Act shall be made unless the bank in respect of which the order is to be made, and in the case of an order under paragraph (c) or (d) of subsection (2) of section 33 of this Act, the director, manager or officer who is to be removed from office, has been given a reasonable opportunity of making representations against or otherwise in respect of the proposed order.
- (2) The Bank shall not make an order under subsection (1) of this section if in its opinion any delay would be detrimental to the interest of the bank, its depositors, creditors or the public generally.
- (3) An order made in consequence of a representation may be confirmed, modified, altered, varied or replaced by the President.
- 38.(1) Where the Governor makes an order revoking the licence of a bank and requiring the business of that bank to be wound up, the bank shall, within 14 days of the date of the order, apply to the Federal High Court for an order winding-up the affairs of that bank and the Federal High Court shall hear the application in priority to all other matters.
- (2) If the bank fails to apply to the Federal High Court within the period specified in subsection (1) of this section, the Governor may apply to the Federal High Court for the winding-up of the bank.
- (3) If the Governor is satisfied that it is in the public interest to do so, he may, without waiting for the period mentioned in subsection (1) of this section to elapse, appoint the Nigeria Deposit Insurance Corporation or any other person as the official receiver or as a provisional liquidator and the Corporation or such other person shall have the power conferred by or under the Companies and Allied Matters Act 1990 and shall be deemed to have been appointed a provisional liquidator by the Federal High Court for the purpose of that Act.
- (4) This section shall have effect and section 408 of the Companies and Allied Matters Act 1990 shall be construed as if the revocation of the licence of a bank under this Act had been included as a ground for winding up by the Federal High Court under that section.

- (5) The liquidator of a licensed bank shall forward to the Bank copies of any returns which he is required to make under the Companies and Allied Matters Act 1990 and reference to liquidator in this subsection shall include a reference to the Nigerian Deposit Insurance Corporation or any other person so appointed.

General and Supplemental

39. (1) Except with the written consent of the Governor-

- (a) no bank shall as from the commencement of this Act, be registered or incorporated with a name which includes the words “Central”, “Federal” Federation”, “National”, “Nigeria”, “Reserve”, “State”, “Christian”, “Islamic”, “Moslem”, “Quranic” or “Biblical”;
- (b) no person other than a bank licensed under this Act shall use or continue to use the word “bank” or any of its derivatives, either in English or in any other language in the description or title under which the person is carrying on business in Nigeria:

Provided that paragraph (b) of this subsection shall not apply to banking institutions referred to in sections 51 and 52 of this Act.

- (2) Every bank shall use as part of its description of title the word “bank” or anyone or more of its derivatives, either in English or in some other language;
- (3) Subsection (1) of this section shall not apply to any registered association of banks, bankers or bank employees formed for the protection of their mutual interest or in furtherance or promotion of education and training of personnel for financial institutions in Nigeria.
- (4) Any person who acts in contravention of this section is guilty of an offence and liable on conviction to a fine of ₦1,000 for each day during which the offence continues.

40. (1) No person other than a bank or any other person authorized to take deposits shall issue any advertisement inviting the public to deposit money with it.

- (2) Any person who issues an advertisement in contravention of the provisions of subsection (1) of this section is guilty of an offence and liable on conviction to a fine of ₦100,000 or to imprisonment for 10 years or to both such fine and imprisonment.
- (3) Where any bank purposes to issue any advertisement, the bank shall deliver to the Bank the text of the proposed advertisement together with the bank’s latest published accounts, and shall thereafter comply with such directives and conditions as the Bank may prescribe and such text shall be regarded as confidential information.

- (4) Any bank which fails to comply with the provisions of subsection (3) of this section is guilty of an offence and liable on conviction to a fine of ₦50,000 and the bank shall in addition pay a fine of ₦1,000 for every day during which an advertisement issued in contravention of subsection (3) of this section continues.
- (5) In this Act, “advertisement” includes any form of advertising whether in publication or by the display of notice or by means of circular or other documents or by any exhibition of photographs or cinematograph or by way of sound broadcasting or television or loudspeakers or other public address systems and references to the issuing of an advertisement shall be construed accordingly; and for the purposes of this Act, an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be so displayed or exhibited.
- (6) An advertisement which contains information calculated to lead directly or indirectly to the deposit of money by the public shall be treated as an advertisement inviting the public to deposit money.
- (7) An advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person and for the purpose of any proceedings under this Act, an advertisement inviting the public to deposit money with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the person.
41. (1) If the President is satisfied that any trade union, the members of which are employed in a bank, has been engaged in acts calculated to disrupt the economy of Nigeria, he may by order, published in the Gazette, proscribe that union (hereafter in this section referred to as “a proscribed union”) which shall, as from the date of the order, cease to exist.
- (2) A proscribed union shall, not later than 14 days from the date of the order under subsection (1) of this section, surrender its certificate of registration to the Registrar who shall take such steps in relation to the distribution of the assets of the union as he deems necessary or in accordance with the registered rules of the union.
- (3) No person who immediately before the date of an order under this section was an officer of a proscribed union shall at any time after that date be an officer of any trade union any of the members of which are employed by bank.
- (4) If the certificate of registration of a proscribed union is not delivered to the Registrar as required under subsection (2) of this section, every person who immediately before the proscription of the union was an officer thereof is

guilty of an offence and liable on conviction to a fine of ₦5,000 or to imprisonment for 6 months or both such fine and imprisonment.

- (5) Any person who contravenes subsection (3) of this section is guilty of an offence and liable on conviction to imprisonment for a term of 5 years without an option of a fine.

- (6) In this section-

“officer” in relation to a union, means any person holding official position in that trade union and, accordingly, includes in particular, any president, secretary or treasurer thereof and every member of the committee of management however described;

“Registrar” means the Registrar of Trade Unions appointed under section 45 of the Trade Unions Act.

42. (1) No bank shall incur any liability to any of its customers by reason only of failure on the part of the bank to open for business during a strike.

- (2) If as a result of a strike, a bank fails to open for business, this bank shall within 24 hours of the beginning of the closure, obtain the approval of the Bank for any continued closure of the bank.

43. (1) Any director, manager, officer or employee of a bank or any other person receiving remuneration from the bank, who asks for, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person-

- (a) for procuring or endeavouring to procure for any person any advances, loans or credit facility from the bank; or

- (b) for permitting any person to overdraw any account with that bank without proper authority or compliance with rules and guidelines for that purpose, is guilty of an offence and liable on conviction to a fine of ₦10,000 or to imprisonment for 3 years or to both such fine and imprisonment and in addition any such gift or any other commission shall be forfeited to the Federal Government.

- (2) The provisions of subsection (1) of this section shall not in any manner derogate from, and shall be without prejudice to any other written law relating to corruption or illegal gratification.

44. (1) Every bank shall, before appointing any director or chief executive, seek and obtain the Bank’s written approval for the proposed appointment.

- (2) No person shall be appointed or shall remain a director, secretary or an officer of a bank who-

- (a) is of unsound mind or as a result of ill health is incapable of carrying out his bankers; or

- (b) is declared bankrupt or suspends payments or compounds with his creditors including his bankers; or
 - (c) is convicted of any offence involving dishonesty or fraud; or
 - (d) is guilty of serious misconduct in relation to his duties; or
 - (e) in the case of a person possessed of professional qualification, is disqualified or suspended (otherwise than of his own request) from practising the profession in Nigeria by the order of any competent authority made in respect of him personally.
- (3) No person who has been a director of or directly concerned in the management of a bank which has been wound up by the Federal High Court shall, without the express authority of the Governor, act or continue to act as a director of or be directly concerned in the management of any other bank.
- (4) Any person whose appointment with a bank been terminated or who has been dismissed for reasons of fraud, dishonesty or conviction for an offence involving dishonesty or fraud shall not be employed by any bank in Nigeria.
- (5) Any bank which knowingly acts in contravention of subsection (1), (2), (3) or (4) of this section is guilty of an offence and liable on conviction to a fine of ₦100,000.
- (6) Where an offence committed by a bank under subsection (4) of this section is proved to have been committed with the knowledge or connivance of any director, manager or any other officer of the bank, he, as well as the bank is guilty of an offence and the director, manager or any other officer of the bank is guilty of an offence and the director, manager or any other officer of the bank shall on conviction be liable to imprisonment for a term not less than five years or to a fine of ₦50,000 or to both such imprisonment and fine.
- (7) It shall not be a defence for any director, manager or officer of a bank to claim that he is not aware of the provisions of subsection (4) of this section, except he can prove that he had obtained prior clearance of such a person from the secretary of the Banker's Committee who maintains a register of terminated, dismissed or convicted staff of banks on the ground of fraud or dishonesty.

Miscellaneous Matters

- 45.(1) Where any offence against any provision of this Act has been committed by a body corporate or firm, any person who was a director, manager, secretary or other similar officer of the body corporate or firm purporting to act in such capacity shall, in addition to the body corporate or firm, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

- (2) Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of the clerk or servant of such agent: provided that such act, omission, neglect or default was committed by the clerk or servant in the course of his employment or by the agent when acting in the course of his employment in such circumstances that had the act, omission, neglect or default been committed by the agent, his principal would have been liable under this section.
46. Any person being a director or manager of a bank, who fails to-
- (a) take all reasonable steps to secure compliance by the bank with the requirements of this Act; or
 - (b) take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act, is guilty of an offence and liable on conviction to a fine of ₦5,000 or to imprisonment for five years or to both such fine and imprisonment for five years
47. Any bank which contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder for which an offence or penalty is not expressly provided is guilty of an offence and liable on conviction to a fine of ₦2,000.
48. Notwithstanding the provisions of this Act or of any law, the Federal High Court or tribunal constituted under any enactment shall have jurisdiction to try any offence under this Act and to impose the full penalty prescribed therefore.
49. (1) Neither the Federal Government nor the Bank nor any officer demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, by this Act.
- (2) For the purpose of this section, the Minister or any officer duly acting on his behalf shall be deemed to be an officer of the Federal Government and the Governor, any Deputy Governor of the Bank or other employee thereof or any person holding any office therein or appointed by the Bank under subsection (2) of section 32 of this Act shall be deemed to be an officer of the Bank.
50. Where a bank is unable to meet its obligations or suspends payment, the assets of the bank in the Federation shall be available to meet all the deposit liabilities of the bank and such deposit liabilities shall have priority over all other liabilities of the bank.

51. (1) Except as provided in section 28 of the Central Bank of Nigeria Act 1991, the provisions of this Act shall not apply to-
 - (a) the fund established under the National Provident Fund Act;
 - (b) the Nigerian Industrial Development Bank Limited;
 - (c) the Federal Mortgage Bank;
 - (d) the Nigerian Bank for Commerce and Industry;
 - (e) the Nigerian Agricultural and Co-operative Bank Limited: Provided that the Governor may in the interest of the economy of Nigeria by order in writing, appoint examiners under this Act to carry out special examinations into the books and affairs of any institutions under this section and may issue directives to any such institution and failure to comply with such directives shall be an offence punishable with a fine of ₦50,000.
- (2) The list of exemptions in subsection (1) of this section may be amended by such addition or deletion as may be deemed necessary by the Governor by order published in the Gazette.
52. The Governor may exempt community banks or profit and loss sharing banks from the provisions of this Act.
53. (1) The provisions of this Act shall apply without prejudice to the provisions of the Companies and Allied Matters Act 1990 in so far as they relate to banks and to winding-up by the Federal High Court.
- (2) Where of any of the provisions of the Companies and Allied Matters Act 1990 are inconsistent with the provisions of this Act, the provisions of this Act shall prevail.
54. The provisions of this Act shall apply without prejudice to the provisions of the Nigeria Deposit Insurance Corporation Act 1988 and where any of the provisions of this Act are inconsistent with any provisions of that Act, the provisions of this Act shall prevail.

Part II

Other Financial Institution

55. (1) The Governor may make regulations, published in the Gazette, to give full effect to the objects and objectives of this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1) of this section, the Governor may make rules and regulations for the operation and control of the institutions exempted by section 51 of this Act.
56. (1) Without prejudice to the provisions of Part 1 of this Act, no person shall carry on other financial business in Nigeria other than insurance and stock broking except it is a company duly incorporated in Nigeria and holds a valid licence granted under section 57 of this Act.

- (2) Any person or institution which, before the commencement of this Act was carrying on such other financial business as are referred to under subsection (1) of this section shall apply in writing to the Bank for a licence within six months from the date of commencement of this Act.
- (3) Any person or institution which fails to apply as provided in subsection (2) of this section shall cease to carry on such financial business.
- 57. (1) Any person wishing to carry on other financial business other than insurance and stock broking in Nigeria shall apply in writing to the Bank for the grant of a licence and shall accompany the application with the following-
 - (a) a draft copy of the memorandum and articles of association of the proposed financial business;
 - (b) such other information, documents and reports as the Bank may, from time to time, specify; and
 - (c) the prescribed application fee.
- (2) After the applicant has provided all such information, documents and reports as the Bank may require under subsection (1) of this section, the Bank may grant the licence with or without conditions or refuse to grant the licence.
- (3) Where an application for a licence is granted, the Bank shall give written notice of that fact to the applicant and the licence fee shall be paid.
- (4) The Bank may vary or revoke any conditions subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence.
- (5) Where the Bank proposed to vary, revoke or impose fresh or additional conditions, the Bank shall before exercising such power, give notice of its intention to the person or institution concerned and gives such a person or institution an opportunity to make representation to the Bank thereon.
- (6) Any person who transacts business without a valid licence under section 56 of this Act or subsection (2) of this section is guilty of an offence and liable on conviction to imprisonment, in the case of an individual, for a term not exceeding 10 years a fine not exceeding ₦500,000 or to both such imprisonment and fine and, in the case of a body corporate, to a fine of ₦500,000.
- 58. (1) Any person who fails to comply with any of the conditions of its licences guilty of an offence and liable on conviction to a fine not exceeding ₦500 for each day during which the condition is not complied with.
- (2) Every person or institution carrying on such financial business as are referred to in section 56 of this Act
Shall-
 - (a) comply with the Monetary Policy Guidelines and other directives as the Bank may, from time to time, specify;

- (b) furnish within the stipulated time, any statistical and other return as the Bank may, from time to time, require,
- (3) Any person who fails to comply with paragraph (a) or (b) of subsection (2) of this section is guilty of an offence and liable on conviction to imprisonment for a term not less than two years and not exceeding three years or to a fine of ₦500 for each day during which such failure occurs.
- (4) Persistent failure to comply with the guidelines or other directives of the Bank or persistent refusal to supply returns in the prescribed form may be a ground for the revocation of a licence.

59.(1) The Bank shall have power to supervise and regulate the activities of other financial institutions.

- (2) The Bank may appoint examiners and any other person to carry out regular or routine examination of the books and affairs of other financial institutions.
- (3) Where the Governor is satisfied that it is in the public interest so to do he may, in addition to the routine or regular examination, order a special examination or investigation of the books and affairs of any other financial institution and for that purpose, the Governor shall have power to appoint one or more qualified persons other than the officers of the Bank to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of such other financial institution.
- (4) The cost and expenses of the Bank or the remuneration of the person so appoint, as the case may be, shall be payable from the fund and property of the financial institution.

Part III

Miscellaneous and Supplement

- 60. (1) notwithstanding any of the provisions of this Act. the Governor may impose a penalty not exceeding ₦100,000 on a bank or any other financial institution for the bank's or other financial institution's failure to comply with any rules, regulations, guidelines or administrative directives made, given or issued by the Bank under this Act.
- (2) The Governor may suspend any licence issued or given to any bank or any other financial institutions which fails to comply with any rules, regulations, guidelines or administrative directives made, given or issued to it by the Bank under this Act.

61. In this Act, unless the context otherwise requires-

“associate” means a company in which another company owns not less than twenty per cent of the shares;

“bank” means a bank licensed under this Act;

“Bank” means the Central Bank of Nigeria;

“banking business” means the business of receiving deposits on current accounts, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor may, be order published in the Gazette, designate as banking business;

“chief executive” in relation to a bank means a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible, subject to the authority of the board of directors, for the conduct of the business and administration of the bank;

“commercial bank” means any bank in Nigeria whose business includes the acceptance of deposits withdrawable by cheques;

“community bank” means a bank whose business is restricted to a specified geographical area in Nigeria;

“deposit” means money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date;

“Deputy Governor” means a Deputy Governor of the Central Bank of Nigeria.

“director” includes any person by whatever name he may be referred to carrying out or empowered to carry out substantially the same functions of a director in relation to the affairs of a company incorporated under the Companies and Allied Matters Act 1990;

“factoring” means the business of acquiring debts due to any person

“Federation” means the Federal Republic of Nigeria;

“Governor” means the Governor or any of the Deputy Governors of the Central Bank of Nigeria;

“leasing” means the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business whatsoever and where the lessor is the owner of the property regardless of whether the letting is with or without an option to purchase the property;

“Licence” means a licence issued under this Act;

“merchant bank” means a bank whose business includes receiving deposits on deposit account, provision of finance, consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person;

“Minister” means the Minister charged with the responsibility for finance;

“other financial institution” means any individual, body, association or group of persons, whether corporate or unincorporated, other than the banks licensed under this Act and other institutions exempted under section 51 of this Act which carries on the business of discount house finance company and money

brokerage and whose principal object include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, Local Purchases Order financing, export finance, project consultancy, financial consultancy, pension fund management and such other business as the Bank may, from time to time, designate;

“President” means the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria;

“profit and loss sharing bank” means a bank which transacts investment or commercial banking business and maintains profit and loss sharing accounts;

“relation of person” includes father, mother, child, brother, sister, uncle, aunt and cousins where applicable, and their spouses;

“shareholders funds” means the aggregate of paid-up share capital statutory and all other reserves;

“State” means any of the State of the Federation.

62.(1) This Act may be cited as the Banks and Other Financial Institutions Act 1991.

(2) The Banking Act 1969 is hereby repealed; and

- (a) the Banking (Amendment) Act 1970;
- (b) the Banking (Amendment) Act 1972;
- (c) the Banking (Amendment) Act 1975; and
- (d) the Banking (Amendment) Act 1979, are consequentially repealed.

Chapter 16

Central Bank of Nigeria (Establishment) Act, 2007

ARRANGEMENT OF SECTIONS

1. Establishment of the Central Bank of Nigeria
2. Objects of the Bank
3. Head office and branches
4. Capital
5. Operating surplus and general reserve fund
6. Establishment of the Board
7. Management of the Bank
8. Appointment, qualification and remuneration of Governor and Deputy Governors
9. Governor and Deputy Governors to be fully devoted to the service of the Bank
10. Appointment of other Directors
11. Disqualification and cessation of appointment
12. Establishment of Monetary Policy Committee
13. Meeting of the Board
14. Appointment of Secretary to the Board and other employees
15. Currency of Nigeria
16. Determination of exchange rate of the naira
17. Sole right of issuing notes and coins
18. Power to print notes and mint coins
19. Denomination and form of currency notes and coins
20. Bank's currency notes and coins to be legal tender
21. Tampering with or trading in notes and coins
22. Lost and damaged notes and coins
23. Exemption from stamp duty
24. Composition of external reserves
25. Maintenance of external reserves
26. Power to buy and sell Nigerian currency
27. Banking operations

28. Treasury operations
29. Credit operations
30. Liquidity management
31. Developmental function
32. Incidental powers
33. Power to require or share information
34. Prohibited activities
35. Publication of monetary policy rate
36. Service to the Federal Government
37. Federal Government's usage of other banks and State Treasures
38. Advances to Federal Government
39. Power to act as banker to State Government, etc.
40. Power to act as agent for Federal, State or Local Governments
41. Banker to other banks
42. Co-operation with banks in Nigeria
43. Establishment of Financial Services Regulation Coordinating Committee
44. Objectives of the Committee
45. Reserve requirements
46. Appointment of other bank as agent
47. Payment and settlement systems
48. Financial year
49. Audit
50. Publication of annual accounts and reports
51. Powers to make regulations
52. Protection against adverse claims
53. Exemption of the Bank from the payment of tax
54. Proceedings of the Board and the Monetary Policy Committee
55. Exclusion of the application of the Companies and Allied Matters Act 1990.
56. Liquidation
57. Power to licence and regulate credit bureau
58. Saving
59. Repeal
60. Interpretation
61. Citation

1st Schedule: Proceedings of the Board

2nd Schedule

Proceedings of the Monetary Policy committee

CENTRAL BANK OF NIGERIA (ESTABLISHMENT) ACT 2007

An Act to repeal the Central Bank of Nigeria Act 1991 and to establish the Central Bank of Nigeria Act; and for other related matters.

[25th May 2007]

COMMENCEMENT

ENACTED by the National Assembly of the Federal Republic of Nigeria

1. Establishment of the Central Bank of Nigeria

- (1) There is established for Nigeria a body known as the Central Bank of Nigeria (hereafter in this Act referred to as “the Bank”).
- (2) The Bank shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) In order to facilitate the achievement of its mandate under this Act and the Banks and Other Financial Institutions Act, and in line with the objective of promoting stability and continuity in economic management, the Bank shall be an independent body in the discharge of its functions.
- (4) Subject to the limitations in this Act, the Bank may acquire, hold and dispose of movable and immovable property for the purpose of its functions.

2. Objects of the Bank

The principal objects of the Bank shall be to-

- (a) Ensure monetary and price stability;
- (b) Issue legal tender currency in Nigeria;
- (c) Maintain external reserves to safeguard the international value of the legal tender currency;
- (d) Promote a sound financial system in Nigeria; and
- (e) Act as banker and provide economic and financial advice to the Federal Government.

3. Head office and branches

The Bank shall have its head office in any location which is by law the capital of the Federal Republic of Nigeria and may open branches in any part of Nigeria and appoint agents and correspondents abroad in accordance with the decisions of the Board.

4. Capital

- (1) The authorized capital of the Bank shall be one hundred billion naira.
- (2) All the capital of the Bank shall be subscribed and held only by the Federal Government.
- (3) The authorized and paid-up capital may be increased by such amount as Board may, from time to time, determine with the approval of the President, and shall be subscribed by the Federal Government and paid up at par.

5. Operating surplus and general reserve fund

- (1) The Bank shall-
 - (a) in respect of each financial year, determine its operating surplus which shall be the remaining sum from its income and other receipts after meeting all expenditure as approved by the Board;
 - (b) as approved by the Board for that year, make provision for the contribution to staff pension funds in accordance with the Pension Reform Act 2004 and for any other purpose approved by the Board.
- (2) The Bank shall establish a general reserve fund and shall allocate thereto at the end of each financial year one-quarter of its operating surplus for the year.
- (3) The balance of the operating surplus shall be paid to the Federal Government half-yearly.

6. Establishment of the Board.

- (1) There shall be for the Bank a board of directors (in this Act referred to as “the Board”) which shall be responsible for the policy and general administration of the affairs and business of the Bank.
- (2) The Board shall consist of-
 - (a) A Governor who shall be the Chairman;
 - (b) Four Deputy Governors;
 - (c) The Permanent Secretary, Federal Ministry of Finance;
 - (d) Five Directors; and
 - (e) Accountant-General of the Federation.
- (3) The Board shall be responsible for-
 - (a) The consideration and approval of the annual budget of the Bank;
 - (b) The approval of the audited and management accounts and the consideration of the management letter from the external auditors;
 - (c) The formulation and implementation of exchange rate policy;
 - (d) Making recommendation to the President for the appointment of auditors in accordance with section 49 of this Act, the provision of the necessary facilities and the rates of remuneration;
 - (e) The establishment and closing of branches and currency centres;
 - (f) Carrying out of such other activities as are necessary and expedient for the purposes of achieving the objectives of the Bank.
- (4) The Board shall approve the detailed responsibilities of each of the Deputy Governors on the recommendation of the Governor.
- (5) Without prejudice to subsection (4) of this section, the Board may, on the recommendation of the Governor, assign or re-assign the Deputy Governors,

from time to time, as may be expedient for the performance of the Bank's functions under or pursuant to this Act.

7. Management of the Bank.

- (1) The Governor or in his absence, one of the Deputy Governors nominated by him, shall be in charge of the day to day management of the Bank and shall be answerable to the Board for his acts and decisions.
- (2) The provisions of section 6 (1) of this Act shall apply in relation to the general policy pursued or intended to be pursued on any administrative matters including staff pensions, salaries, allowances and any other similar matters.

8. Appointment, qualification and remuneration of Governor of and Deputy Governors

- (1) The Governor and Deputy-Governors shall be persons of recognized financial experience and shall be appointed by the President subject to confirmation by the Senate on such terms and conditions as may be set out in their respective letters of appointment.
- (2) The Governor and Deputy Governors shall be appointed in the first instance for a term of five years and shall each be eligible for re-appointment for another term not exceeding five years: Provided that, of the first four Deputy Governors to be so appointed, one shall in the first instance be appointed for three years and two shall in the first instance be appointed for four years.
- (3) The salaries, fees, wages or other remuneration or allowances including pension and other allowances payable to the Governor and to the Deputy Governors shall be as stipulated from time to time by the Board subject to the approval of the President.
- (4) The Governor shall appear before the National Assembly at semi-annual hearings as specified in paragraph (b) regarding-
 - (a) Efforts, activities, objectives and plans of the Board with monetary policy; and
 - (b) Economic development and prospects for the future described in the report required in subsection (5) (a) of this section.
- (5) The Governor shall, from time to time-
 - (a) Keep the President, informed of the affairs of the Bank including a report on its budget; and
 - (b) Make a formal report and presentation on the activities of the Bank and the performance of the economy to the relevant Committees of the National Assembly.

9. Governor and Deputy Governors to be fully devoted to the service of the Bank

The Governor and the Deputy Governors shall devote the whole of their time to the service of the Bank and while holding office shall not engage in any full- or part-time employment or vocation whether remunerated or not except such personal or charitable causes as may be determined by the Board and which do not conflict with or detract from their full-time duties:

Provided that the Governor or any of the Deputy Governors may, by virtue of his Office, be appointed with the approval of the Board to-

- (a) Act as member of any Commission established by the Federal Government to enquire into any matter affecting currency or banking in Nigeria;
- (b) Become Governor, Director or member of the Board or by whatever name called, of any international bank or international monetary institution to which the Federal Government shall have interest or give support or approval; and
- (c) Become Director of any corporation in Nigeria under section 31 of this Act in which the Bank may participate.

10. Appointment of other Directors

- (1) The five Directors of the Bank shall be appointed by the President subject to confirmation by the Senate and in appointing the five external Directors of the Bank, the President shall have due regard to a fair representation of the financial, agricultural, industrial and commercial interests and the principle of Federal Character.
- (2) A Director appointed pursuant to this section shall be a person of recognized standing and experience in any of economics, law, public administration, business administration, accounting, banking and finance, but while a Director of the Bank, he shall not hold Office as a Director on the Board of any Federal, State or Local Government or of any other body:

Provided that he may hold Office as a Director of any private, commercial, financial, agricultural, industrial, or other organization or institution so long as his duties in respect thereof do not conflict with his duties as a Director of the Bank.

- (3) A Director appointed pursuant to this section shall-
 - (a) Hold office for four years and shall be eligible for re appointment for another term of four years;
 - (b) Be entitled to such fees and allowances as may be prescribed by rules made in that behalf by the Board and approved by the President.

11. Disqualification and cessation of appointment.

- (1) A person shall not remain a Governor, Deputy Governor or Director of the Bank if he is-
 - (a) A member of any Federal or State legislative house; or
 - (b) A Director, officer or employee of any bank licenced under the Banks and Other Financial Institutions Act.
- (2) The Governor, Deputy Governor or Director shall cease to hold office in the Bank if he-
 - (a) becomes of unsound mind or, owing to ill-health, is incapable of carrying out his duties;
 - (b) is convicted of any criminal offence by a court of competent jurisdiction except for traffic offences or contempt proceedings arising in connection with the execution or intended execution of any power or duty conferred under this Act or the Banks and Other Financial Institutions Act;
 - (c) Is guilty of a serious misconduct in relation to his duties under this Act;
 - (d) Is disqualified or suspended from practising his profession in Nigeria by order of a competent authority made in respect of him personally;
 - (e) becomes bankrupt;
 - (f) Is removed by the President:

Provided that the removal of the Governor shall be supported by two-thirds majority of the Senate praying that he be so removed.

- (3) The Governor or any Deputy Governor may resign his Office by giving at least three months' notice in writing to the President of his intention to do so and any Director may similarly resign by giving at least one months' notice in writing to the President of his intention to do so.
- (4) If the Governor, any Deputy Governor or Director of the Bank dies, resigns or otherwise vacates his Office before the expiry of the term for which he has been appointed, there shall be appointed a fit and proper person to take his place on the Board for the unexpired period of the term of appointment in the first instance if the vacancy is that of-
 - (a) The Governor or a Deputy Governor, the appointment shall be made in the manner prescribed by section 8 (1) and (2) of this Act; and
 - (b) Any Director, the appointment shall be made in the manner prescribed by section 10 (1) and (2) of this Act.

12. Establishment of Monetary Policy Committee.

- (1) In order to facilitate the attainment of the objective of price stability and to support the economic policy of the Federal Government, there shall be a Committee of the Bank known as the Monetary Policy Committee (in this Act referred to as lithe MPC”).

- (2) The MPC shall consist of-
 - (a) The Governor of the Bank who shall be the Chairman;
 - (b) The four Deputy Governors of the Bank;
 - (c) Two members of the Board of Directors of the Bank;
 - (d) Three members appointed by the President; and
 - (e) Two members appointed by the Governor.
- (3) The MPC shall have responsibility within the Bank for formulating monetary and credit policy.
- (4) The appointment of a member of the MPC pursuant to subsection 2 (d) and (e) of this section, the remuneration, filling of temporary vacancies, qualification, tenure of Office and disqualification shall be subject to the same terms as are stipulated for a Director under sections 10 and 11 of this Act.
- (5) The provisions of the Second Schedule to this Act shall have effect with respect to the proceedings of the MPC.

13. Meetings of the Board.

- (1) Meetings of the Board shall take place as often as may be required, but not less than six times in every financial year of the Bank.
- (2) The Governor shall preside at every meeting of the Board and in his absence, a Deputy Governor designated by him, shall preside at such meeting.
- (3) Five members of the Board, three of whom shall be Directors other than the Governor or the Deputy Governors shall form a quorum at any meeting.
- (4) Unless otherwise provided in this Act, decisions shall be by a simple majority of the votes of the members present, but in case of any equality of votes, the person presiding shall have a casting vote.

14. Appointment of Secretary to the Board and other employees

- (1) There shall be for the Board a Secretary who shall be-
 - (a) Appointed by the Board; and
 - (b) Be responsible to the Board through the Governor.
- (2) The Secretary shall be responsible for-
 - (a) Convening, on the authority of the Chairman, meetings of the Board;
 - (b) Recording the minutes of all meetings of the Board and such other meetings as the Board may direct;
 - (c) Acting as Secretary to any committee of the Board;
 - (d) Maintaining and keeping minute books and a register of the Directors of the Bank;
 - (e) Keeping in safe custody the common seal of the Bank;
 - (f) Keeping in safe custody all title documents relating to the Bank's properties;

- (g) Keeping in safe custody all agreements entered into by the Bank with any third party;
- (h) Carrying out such other duties and responsibilities as may be assigned to him, from time to time, by the Governor.
- (3) The Secretary to the Board shall be a lawyer, with at least, 10 years cognate experience.
- (4) Appointment of employees of the bank shall only be in respect of positions created by the Bank and on such terms and conditions as may be laid down by the Board.

Provided that the appointment and removal of staff of the grade of Assistance Director and above shall be with the approval of the Board.

- (5) A salary, fee, wage, allowance or other remuneration paid by the Bank shall not be computed by reference to the operating surplus of the Bank.
- (6) The salaries, fees, wages, or other remuneration payable to or in respect of employees of the Bank, other than the Governor or Deputy Governors, shall be as stipulated, from time to time, by the Board.

15. Currency of Nigeria

The unit of currency in Nigeria shall be the naira which shall be divided into one hundred kobo.

16. Determination of exchange rate of the naira

The exchange rate of the naira shall be determined, from time to time, by a suitable mechanism devised by the Bank for that purpose.

17. Sole right of issuing notes and coins

The Bank shall have the sole right of issuing currency notes and coins throughout Nigeria and neither the Federal Government nor any State Government or Local Government, other person or authority shall issue currency notes, bank notes or coins or any documents or tokens payable to bearer on demand being document or token which are likely to pass as legal tender.

18. Power to print notes and mint coins

- (a) The Bank shall- Arrange for the printing of currency notes and the minting of coins;
- (b) issue, re-issue and exchange currency notes and coins at the Bank's offices and at such agencies as it may, from time to time, establish or appoint;
- (c) arrange for the safe custody of un-issued stocks of currency notes and for the preparation, safe custody and destruction of plates and paper for the printing of currency notes and disc for the minting of coins; and

- (d) arrange for the destruction of currency notes and coins withdrawn from circulation under the provisions of section 20(3) of this Act or otherwise found by the Bank to be unfit for use.

19. Denomination and form of currency notes and coins

- (1) The Currency notes and coins issued by the Bank shall be-
 - (a) in such denominations of the Naira or fractions thereof as shall be approved by the President on the recommendation of the Board; and
 - (b) of such forms and designs and bear such devices as shall be approved by the President on the recommendation of the Board.
- (2) The standard weights and composition of coins issued by the Bank and the amount of remedy and variation shall be determined by the President on the recommendation of the Board.

20. Bank's currency notes and coins to be legal tender.

- (1) The currency notes issued by the Bank shall be legal tender in Nigeria at their face value for the payment of any amount.
- (2) The coins issued by the Bank shall, if such coins have not been tampered with, be legal tender in Nigeria at their face value up to such amount or amounts as may be determined, from time to time, by the Bank.
- (3) Notwithstanding subsections (1) and (2) of this section, the Bank shall have power, if directed to do so by the President and after giving reasonable notice in that behalf, to call in any of its notes or coins on payment of the face value thereof and any note or coin with respect to which a notice has been given under this subsection, shall, on the expiration of the notice, cease to be legal tender, but, subject to section 22 of this Act, shall be redeemed by the Bank upon demand.
- (4) It shall be an offence punishable by a term of imprisonment of not less than 5 years for any person to falsify, make or counterfeit any bank note or coin issued by the Bank which is legal tender in Nigeria.
- (5) A person who refuses to accept the naira as a means of payment is guilty of an offence and liable on conviction to a fine of ₦50,000.00 or 6 months' imprisonment:

Provided that the Bank shall have powers to prescribe the circumstances and conditions under which other currencies may be used as medium of exchange in Nigeria.

21. Tampering with or trading in notes and coins

- (1) A person who tampers with a coin or note issued by the Bank is guilty of an offence and shall on conviction be liable to imprisonment for a term not less than six months or to a fine not less than ₦50,000 or to both such fine and imprisonment.

- (2) A coin or note shall be deemed to have been tampered with if the coin or note has been impaired, diminished or lightened otherwise than by fair wear and tear or has been defaced by stumping, engraving, mutilating, piercing, stapling, writing, tearing, soiling, squeezing or any other form of deliberate and wilful abuse whether the coin or note has or has not been thereby diminished or lightened.
- (3) For the avoidance of doubt, spraying of, dancing or matching on the naira or any note issued by the Bank during social occasions or otherwise howsoever shall constitute an abuse and defacing of the naira or such note and shall be punishable, under subsection (1) of this section.
- (4) It shall also be an offence punishable under subsection (1) of this section for any person to hawk, sell or otherwise trade in the naira notes, coins or any other note issued by the Bank.
- (5) In this section-
 - (i) "Matching" includes spreading, scattering or littering of any surface with any naira notes or coins and stepping thereon, regardless of the value, volume, occasion or intent.
 - (ii) "Spraying" includes adorning, decorating or spraying anything or any person or any part of any person or the person of another with naira notes or coins or sprinkling or sticking of the naira notes or coins in a similar manner regardless of the amount, occasion or the intent.

22. Lost and damaged notes and coins

- (1) A person shall not be entitled to recover from the Bank the value of any lost, stolen, mutilated or imperfect note or coin.
- (2) The circumstances in which, and the conditions and limitations subject to which, the value of the lost, stolen, mutilated or imperfect notes or coins may be refunded ex gratia shall be within the absolute discretion of the Bank.

23. Exemption from stamp duty

The Bank shall not be liable for the payment of any stamp duty under the Stamp Duties Act in respect of its notes issued as currency.

24. Composition of external reserves

- (a) The Bank shall at all times maintain a reserve of external assets consisting of all or any of the following-
 - gold coin or bullion;
 - (b) balance at any bank outside Nigeria where the currency is freely convertible and in such currency, notes, coins, money at call and any bill of exchange bearing at least two valid and authorised signatures and having a maturity not exceeding ninety days exclusive of days of grace;

- (c) treasury bills having a maturity not exceeding one year issued by the Government of any country outside Nigeria whose currency is freely convertible;
- (d) securities of, or guarantees by, a Government of any country outside Nigeria whose currency is freely convertible; provided such securities shall mature in a period not exceeding ten years from the date of acquisition and are of such investment grade as may be determined by the Board from time to time;
- (e) securities of, or guarantees by, international financial institutions if such securities are expressed in currency freely convertible, in the form of investment grade assets as may be determined by the Board and maturity of the securities shall not exceed five years;
- (f) Nigeria's gold tranche in the International Monetary Fund;
- (g) allocation of Special Drawing Rights made to Nigeria by the International Monetary Fund;
- (h) investment by way of loans or debenture in an investment bank or development financial institutions within or outside Nigeria for a maximum period of five years in so far as-
 - (i) the amount invested is not more than 5% of the total foreign reserves;
 - (ii) the reserve level at the time of investment is more than such amount as will sustain twenty-four months of import; and
 - (iii) the loan or debenture is denominated in foreign currency;

Provided the investment bank or development financial institution referred to in paragraph (h) of this section carries such a rating by rating agencies as may be prescribed from time to time by the Bank; and

- (iv) such other securities and investment as may be approved from time to time by the Board:

Provided they are liquid foreign currency assets that are of investment grade and in the form of freely convertible currencies.

25. Maintenance of external reserves.

The Bank shall use its best endeavour to maintain external reserves at levels considered by the Bank to be appropriate for the economy and the monetary system of Nigeria.

26. Power to buy and sell Nigerian currency

The Bank shall issue and redeem on demand at its head office, Nigeria currency against other currencies eligible for inclusion in the reserve of external asset under this Act.

27. Banking operations

The Bank may-

- (a) issue demand drafts and effect other kinds of remittance payable at its own offices or at the offices of agencies or correspondents;
- (b) open accounts for and accept deposits from the Federal, State and Local Governments, and from funds, institutions and corporations of all such Governments, banks and other credit or financial institutions;
- (c) maintain accounts with central banks and other banks outside Nigeria;
- (d) act as correspondent, banker or agent for any central bank or other monetary authority established under government auspices;
- (e) accept from customers, for custody, securities and other articles of value;
- (f) undertake on behalf of customers and correspondents, the purchase, sale, collection and payment of securities, currencies and credit instruments in Nigeria or abroad and the purchase or sale of gold or silver.

28. Treasury operations

The Bank may

- (a) purchase and sell gold coin or bullion;
- (b) purchase, sell, discount and rediscount inland bills of exchange and promissory notes arising out of bona fide commercial transactions bearing two or more valid and authorised signatures and maturing within ninety days exclusive of days of grace, from the date of acquisition;
- (c) purchase, sell, discount and rediscount inland bills of exchange and promissory notes bearing two or more valid and authorised signatures drawn or issued for the purpose of financing seasonal agricultural operation or the marketing of crops, semi manufacturing or manufacturing operation designed for export, or the marketing of these products and maturing within 180 days, exclusive of days of grace, from the date of acquisition;
- (d) purchase, sell, discount or rediscount treasury bills of the Federal Government which have been publicly offered for sale and are to mature within 364 days;
- (e) purchase, sell, discount or rediscount treasury certificates maturing within such a period as may be determined by the Federal Government and specified by an instrument made by the Federal Government;
- (f) discount and rediscount project-tied bonds issued by State Governments, Local Governments, corporations owned by the Federal or State Governments, being bonds which have been publicly offered for sale and with maturity not exceeding three years;
- (g) purchase and sell securities of the Federal Government maturing in not more than twenty-five years which have been publicly offered for sale or form part of an issue which is being made to the public at time of acquisition, so that the total amount of such securities of maturity exceeding two years in the

ownership of the Bank other than securities held in terms of paragraph (h) of this section or held by the Bank as collateral under section 29 (l) (h) shall not together at any time exceed seventy-five per cent of the total demand liabilities of the Bank;

- (h) invest in securities of the Federal Government for any amount and to mature at any time, on behalf
- (i) of staff pension funds and other internal funds of the Bank;
- (j) purchase and sell foreign currencies and purchase, sell, discount and re-discount bills of exchange
- (k) and treasury bills drawn in or on places abroad and maturing within 184 days exclusive of days of
- (l) grace from the date of acquisition;
- (m) purchase and sell securities of or guaranteed by any Government whose currency is freely
- (n) convertible or securities issued by international financial institutions, of which Nigeria is a member,
- (o) which are also expressed in currencies which are freely convertible and are of investment grade; and
- (p) hold redeemable bonds for the purpose of regularizing any currency exchange exercise.

29. Credit operations.

- (1) The Bank may-
 - (a) grant advances for fixed periods not exceeding three months against publicly issued treasury bills of the Federal Government;
 - (b) grant advances for fixed periods not exceeding one year at a minimum rate of interest of at least one per cent above the Bank's monetary policy rate against-
 - (i) gold coin or bullion,
 - (ii) securities of the Federal Government which have been publicly offered for sale and are to mature within a period of twenty-five years:

Provided that no advance so secured shall at any time exceed seventy-five percent of the market value of the security pledged and that the total of such securities held by the Bank is within the limitation imposed by section 28 (g);

- (iii) such bills of exchange and promissory notes as are eligible for purchase, discount or rediscount by the Bank up to seventy-five per cent of their nominal value;
- (iv) warehouse warrants or their equivalent (securing possession of goods), in respect of staple commodities or other goods duly insured and with a letter of hypothecation from the owner:

Provided that no such advances shall exceed seventy-five per cent of the current market value of the commodities in question;

(v) treasury certificates issued by the Federal Government: Provided that no advances so secured shall at any time exceed seventy-five per cent of the market value of the certificates pledged;

(c) notwithstanding section 34(d) of this Act, grant temporary advances to banks within the meaning of the Banks and Other Financial Institutions Act which participate in bank clearing in respect of temporary debit balances on their accounts at such rate of interest and under such terms as the Bank may, from time to time determine;

(d) grant advances to any authority-

(i) for fixed periods not exceeding one year at a rate of interest which shall be at least one per cent above the Bank's monetary policy rate; and

(ii) except as prescribed in subsection (1)(e) of this section, upon such conditions as the Bank may specify or as prescribed to ensure payment thereof with interest;

(e) grant advances referred to in Sub-section (1)(d) of this section in any particular case where a guarantee in writing is given by the Federal Government to the Bank on behalf of any such authority so that-

(i) the total advances which may, subject to the provisions of this section, be granted shall not exceed an amount considered by the Bank to be adequate for the authority to commence its operations at the beginning of the crop or produce season;

(ii) such advances shall be secured so soon after the advances have been granted as may be agreed by the Bank (either in part or in whole) as prescribed in subsection (1) (a) and (b) of this section and the said provisions shall be so construed;

(f) any advance which may be granted by virtue of the provisions or subsection (1)(d) and (e) of this section shall be used solely for the purpose of financing-

(i) the purchasing and marketing operations authorized to be undertaken by any such authority by the law under which the authority was established or as may be approved by the Bank, and

(ii) with the approval of the Bank, other operations as may be incidental thereto:

Provided that any such authority may, if it so wishes, make advances to any licenced buying agent (within the meaning of any law under which the authority was established) for the purchase of produce for sale to the said authority; and provided also that the quantity of produce to be so purchased is included in the estimated tonnage of crops against which total advances are to be made by the Bank.

- (2) Paragraphs (d) to (f) of Subsection (1) of this section relate to any authority of the Federal Government, State Government, Local Government or two or more State Governments including an interim authority established for such purpose by any law in operation in Nigeria.
- (3) The reference in paragraphs (d) to (f) of subsection (1) of this section to the granting of advances includes a reference to the provision of credit facilities.

30. Liquidity management

The Bank shall have power-

- (a) to carry out open market operations for the purpose of maintaining monetary stability in the economy of the country, and without prejudice to the generality of the foregoing, the Bank may also for that purpose issue, place, sell, repurchase, amortize or redeem securities (which shall constitute its obligations) and the securities shall be issued at such rate of interest and under such conditions of maturity, amortization, negotiability and redemption as the Bank may deem appropriate;
- (b) to issue other forms of securities including treasury bills as it may deem necessary for purposes of liquidity management;
- (c) to sell or place by allocation to each bank any securities issued under paragraphs(a) or (b) of this section; and
- (d) to repurchase, amortize or redeem in such manner as the Bank may deem appropriate, any such securities.

31. Developmental function

The Bank may subscribe to, hold and sell shares of any corporation or company or debentures thereof set up with the approval of or under the authority of the Federal Government for the purpose of promoting the development of money or capital markets in Nigeria or of stimulating financial economic development so however that in any such case, the total value of the holdings of shares or, as the case may be, debentures to which this paragraph applies shall not at any time exceed ten times the aggregate of the Bank's paid-up capital and the general reserve fund of the Bank.

32. Incidental powers

- (1) The Bank may, subject as is expressly provided in this Act generally conduct business as a bank, and do all such things as are incidental to or consequential upon the exercise of its power or the discharge of its duties under this Act.
- (2) The Governor may, at any time in his discretion and by previous notice in writing lodged with the Board, decide that the powers conferred by sections 28(d), (g), (h), 29(1) (b) and 30 of this Act be extended to the treasury bills and treasury certificates or the securities, as the case may be, of any State

Government with which the Bank appears substantially to have established the relationship of banker, or to any specified treasury bills and treasury certificates or securities of such a State Government subject to the same conditions as specified in those paragraphs and subject to limitations specified in section 28 (g) which limitations shall then apply to the aggregate value of the Federal and State Government securities so dealt with.

33. Power to require or share information.

- (1) In addition to any of its powers under this Act, the Bank may-
 - (a) require persons and institutions having access thereto, at all reasonable times, to supply, in such forms as the Bank may from time to time direct, information relating to or touching or concerning matters affecting the economy of Nigeria; and
 - (b) issue guidelines to any person and any institution under its supervision.
- (2) The Bank shall take account of matters of confidential nature supplied to the Bank under this section, but where the Bank is satisfied that it is in the national interest and that the person supplying the information does not object to a proposal to publish it within a reasonable time of becoming aware of it, the Bank may, from any information in its possession, compile and publish statistical data, and anything relevant thereto, on the national economy.
- (3) Where any person lawfully required to supply information for the purpose of this section-
 - (a) supplies information which he knows to be false or supplies the information recklessly as to its truth or falsity; or
 - (b) without reasonable excuse (the proof of the reasonableness to lie on him) fails to comply with any requirement of the Bank under subsection (1)(a) of this section, the supply or failure to supply, as the case may be, as provided, shall be an offence under this section.
- (4) An offence under this section is punishable on conviction by-
 - (a) imprisonment not exceeding three years or with a fine not exceeding ₦10,000,000 for every false information or with both such imprisonment and fine;
 - (b) a fine not exceeding ₦2,000,000 for failure to comply with any requirement of the Bank.
- (5) A person or institution that fails to comply with any guideline issued under Sub-section (1) (b) of this section shall be liable on conviction-
 - (a) in the case of an institution, to a fine not exceeding ₦10,000,000; and

- (b) in the case of a person, to imprisonment for a term not exceeding three years or to a fine of not less than ₦50,000 and not exceeding ₦2,000,000 or to both such imprisonment and fine.
- (6) The Bank may, in the exercise of its powers and on the basis of reciprocity, enter into agreement or arrangements with other regulatory authorities in Nigeria or in other countries exercising similar responsibilities for-
 - (a) the promotion of mutual co-operation; and
 - (b) the exchange of information for purposes of enhancing the supervision and regulation of financial institutions:

Provided that the exchange of such information shall be conditional upon assurances of confidential treatment to the information so given or received.

34. Prohibited activities

The Bank shall not-

- (a) engage in trade or otherwise have a direct interest in any commercial, agricultural or industrial undertaking, except as provided in sections 27 to 32 of this Act, or in any undertaking, except such interest which the Bank may in any way acquire in the course of satisfaction of debts due to it, and provided that all such interests so acquired shall be disposed of at the earliest suitable time;
- (b) except as provided in section 31 of this Act, purchase the shares of any corporation or company including the shares of any banking institution;
- (c) grant loan upon the security of any shares;
- (d) subject to the provisions of section 38 of this Act, grant secured advances or advances secured otherwise than as laid down in section 29(1)(a) and (b) of this Act:

Provided that in the event of any debts due to the Bank becoming in the opinion of the Bank endangered, the Bank may secure such debts on any real or other property of the debtor and may acquire such property which shall be re-sold at the earliest suitable time;

- (e) purchase, acquire or lease real property except in accordance with the provision of paragraph (d) of this section and except so far as the Bank shall consider necessary or expedient for the provision or future provision of business premises for the Bank and its agencies and any clearing houses set up as provided in section 47 of this Act and residences for the Governor of the Bank;
- (f) draw or accept bills payable otherwise than on demand;
- (g) pay interest on deposits except deposits in respect of cash reserve and special deposits as stipulated in section 45(1) (a) and (c) of this Act;

- (h) accept for discount or as security for an advance made by the Bank bills or notes signed by members of the Board or by officers and other employees of the Bank; and
- (i) open accounts for or accept deposits from persons other than as provided in section 27(b) and (c) of this Act.

35. Publication of monetary policy rate.

Bank shall make public, at all times, its monetary policy rate.

36. Service to the Federal Government.

- (1) The Bank shall be entrusted with Federal Government banking and foreign exchange transactions.
- (2) The Bank shall receive and disburse Federal Government moneys and keep account thereof.
- (3) In any place where the Bank has no branch, it may appoint another bank to act as its agent for the collection and payment of Federal Government moneys.

37. Federal Government's usage of other banks and State Treasuries

Notwithstanding the provisions of section 36 of this Act, the Federal Government may-

- (a) maintain accounts in Nigeria with other banks in such cases and on such conditions as the Bank may determine; and
- (b) use the services of the State Treasuries for the collection and payment of Federal Government moneys in places where it may be appropriate or convenient to do so.

38. Advances to Federal Government.

- (1) Notwithstanding the provisions of section 34(d) of this Act, the Bank may grant temporary advances to the Federal Government in respect of temporary deficiency of budget revenue at such rates of interest as the Bank may determine.
- (2) The total amount of such advances outstanding shall not at any time exceed five per cent of the previous year's actual revenue of the Federal Government.
- (3) All Advances made pursuant to this section shall be repaid-
 - (a) as soon as possible and shall in any event be repayable by the end of the Federal Government financial year in which they are granted and if such advances remain unpaid at the end of the year, the power of the Bank to grant such further advances in any subsequent year shall not be exercisable, unless the outstanding advances have been repaid; and (b) in such form as the Bank may determine;

provided that no repayment shall take the form of a promissory note or such other promise to pay at a future date or securitization by way of issuance of

treasury bills, bonds, certificates or other forms of security which is required to be underwritten by the Bank.

39. Power to act as banker to State Governments, etc.

The Bank may act as banker to States and Local Governments and to funds, institutions or corporations established by Federal, State and Local Governments.

40. Power to act as agent for Federal, State or Local Governments

The Bank may act generally as agent for the Federal Government, State Government, or Local Governments-

- (a) where the Bank can do so appropriately and consistently with the provisions of this Act and with its duties and functions as a Central Bank; and
- (b) on such terms and conditions as may be agreed between the Bank and the Government concerned.

41. Banker to other banks

42. Co-operation with banks in Nigeria

- (1) The Bank shall wherever necessary seek the co-operation of and co-operate with other banks in Nigeria to-
 - (a) promote and maintain adequate and reasonable financial service for the public;
 - (b) ensure high standards of conduct and management throughout the banking system; and
 - (c) further such policies not inconsistent with this Act as shall in the opinion of the Bank be in the national interest.
- (d) Notwithstanding the provision of sections 29(1)(c) and 34 (d) of this Act, the Bank may grant loans and other accommodation facilities at such rate of interest and on such terms as the Bank may determine to any bank which may be having liquidity problems.

43. Establishment of Financial Services Regulation Co-ordinating Committee

- (1) There is hereby established for the purpose of co-ordinating the supervision of financial institutions, a Financial Services Regulation Co-ordinating Committee (in this Act referred to as “the Committee”).
- (2) The Committee shall consist of –
 - (a) the Governor of the Bank who shall be the Chairman;
 - (b) the Managing Director, Nigeria Deposit Insurance Corporation;
 - (c) the Director-General, Securities and Exchange Commission;
 - (d) the Commissioner for Insurance;
 - (e) the Registrar-General, Corporate Affairs Commission; and
 - (f) a representative of the Federal Ministry of Finance not below the rank of a Director.

44. Objectives of the Committee.

The objectives of the Committee shall be to-

- (a) co-ordinate the supervision of financial institutions especially conglomerates;
- (b) cause reduction of arbitrage opportunities usually differing regulation and supervision standards amongst supervisory authorities in the economy;
- (c) deliberate on problems experienced by any member in its relationship with any financial institutions;
- (d) eliminate any information gap encountered by any regulatory agency in its relationship with any group of financial institutions;
- (e) articulate the strategies for the promotion of safe, sound and efficient practices by financial intermediaries; and
- (f) deliberate on such other issues as may be specified from time to time.

45. Reserve requirements

(1) The Bank may, from time to time, issue directives by circular requiring each bank to-

- (a) maintain at all times in the form of cash reserves with the Bank, at its office, a sum equal to a prescribed ratio of the bank's deposit liabilities;
- (b) hold a minimum amount of specified liquid assets which shall be expressed as a ratio of deposit liabilities of the bank; and
- (c) maintain as special deposits with the Bank at its head office a percentage of the bank's deposit liabilities or a percentage of an increase or the absolute increase in such deposit liabilities over an amount outstanding on a date, and for a period as shall be specified by the Bank.

(2) For the purpose of subsection (1) (a) of this section, the Bank shall specify-

- (a) the class of deposit liabilities against which the cash reserves mentioned in that paragraph shall be held; and
- (b) the ratio of cash reserve which a bank shall so maintain.

(3) for the purpose of subsection (1) (a) of this section, the cash reserves of a bank shall be determined within such period as the Bank may, from time to time specify, on the basis of the periodic balances of the bank's deposit liabilities and the Bank shall have power to-

- (a) require each bank from time to time to prepare and deliver to the Bank in such form and within such period as the Bank may specify, a true and correct statement showing the position of the deposit liabilities of the bank and the Bank may require such statement to be made at such intervals as it may specify;
- (b) require any bank to furnish to it such information and statistics in such form and as often as the Bank may deem necessary for the purpose of satisfying

itself that the bank concerned has complied or is complying with the provisions of subsection (1) of this section.

- (4) For the purpose of subsection (1)(b) of this section, the Bank shall have power, in respect of the specified liquid assets which may, from time to time, be held by a bank, to vary the composition and proportion of each category.
- (5) For the purpose of subsection (1)(c) of this section, the Bank shall have power to specify the class of deposits to which the provisions of that subsection shall apply and any special deposits held in accordance with that subsection shall not count as specified liquid assets for the purposes of subsection (1)(b) of this section, and subject to the provisions of this subsection, the Bank may, at its discretion, pay interest on such special deposits held by it.
- (6) The Bank shall have power to prohibit any bank which fails to comply with any directive issued under this section, from extending new loans and advances and from undertaking new investments, until the bank complies with the directive to the satisfaction of the Bank; and may, in addition, levy fine as appropriate under the provisions of section 13(5) of the Banks and Other Financial institutions Act.
- (7) A bank which furnishes false information to the Bank for any purpose under this section is guilty of an offence and is liable on conviction to a fine not less than ₦10,000,000 but not exceeding ₦20,000, 000.

46. Appointment of other bank as agent

The Bank may appoint as its agent any bank in Nigeria on such terms as may be agreed between the Bank and the bank concerned for the issue, re-issue, exchange and withdrawal of currency notes and coins, or for any other purpose pertaining to the Bank's functions under this Act.

47. Payment and settlement systems

- (1) The Bank shall facilitate the clearing of cheques and credit instruments for banks carrying on business in Nigeria and for this purpose, the Bank shall at any appropriate time establish clearing houses in premises provided by the Bank in such places as the Bank may consider necessary:

Provided that a bank may be barred from participating in clearing for such period as the Bank may deem fit for non-compliance with directives of the Bank.

- (2) Notwithstanding subsection (1) of this section and in furtherance of the provisions of section 2(d) of this Act, the Bank shall continue to promote and facilitate the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems).

- (3) The Bank shall have power to prescribe rules and regulations for the efficient operation of all clearing and settlement systems.
- (4) In furtherance of the objective of a sound financial system and notwithstanding the provisions of the Evidence Act, any physical or electronic record of transactions that is in a format approved by the Bank shall constitute sufficient proof of such transactions.

48. Financial year

The financial year of the Bank shall begin on 1st January and end on 31st December.

49. Audit

- (1) The accounts of the Bank shall be audited by an auditor or auditors appointed in accordance with the provisions of section 6 of this Act.
- (2) The Auditor-General of the Federation shall conduct an examination of the accounts of the Bank, and submit a report thereon relating to the issue, re-issue, exchange and withdrawal of currency notes and coins by the Bank and the Bank shall provide all necessary facilities for the purpose of the examination.

50. Publication of annual accounts and reports

- (1) The Bank shall, within two months after the close of each financial year, transmit to the National Assembly and the President a copy of its annual accounts certified by the Auditor.
- (2) A report required to be submitted to the National Assembly and the President shall be published by the Bank in such manner as the Governor may direct.
- (3) The Board shall ensure that accounts submitted pursuant to this section shall as soon as possible be published in the Gazette.
- (4) The Bank shall as soon as may be practicable after the last day of each month make up and publish a return of its assets and liabilities as at the close of business on that day, or if that day is a holiday, as at the close of business on the last preceding business day.
- (5) A copy of the return referred to in subsection (5) of this section shall be forwarded to the President and shall be published in the Gazette.
- (6) In the application of this section, the gold tranche position at the International Monetary Fund shall form part of the external reserve assets of the Bank.

51. Power to make regulations

The Board shall have power to make and alter rules and regulations for the good order and management of the Bank.

52. Protection against adverse claims

- (1) Neither the Federal Government nor the Bank nor any officer of that Government or Bank shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, by this Act.
- (2) For the purpose of this section, the Minister or any officer duly acting on his behalf shall be deemed to be an officer of the Federal Government and the Governor, any Deputy Governor of the Bank or other employee shall be deemed to be an officer of the Bank.

53. Exemption of the Bank from the payment of tax

- (1) The Bank shall be exempted from the payment of income tax under the Companies Income Tax Act or any subsequent amendment thereto.
- (2) The Bank shall not be liable for the payment of tenement rate, ground rent or such other property tax imposed under any legislation dealing with real property.

54. Proceedings of the Board and the Monetary Policy Committee

The provisions contained in the First and Second Schedules to this Act shall have effect with respect to the proceedings of the Board and Monetary Policy Committee respectively and the other matters contained therein and the Board shall have power to amend the provisions of the Schedules as it may deem necessary.

55. Exclusion of the application of the Companies and Allied Matters Act 1990

The provisions of the Companies and Allied Matters Act 1990 or any amendments thereto shall not apply to the Bank.

56. Liquidation.

The Bank shall not be placed in liquidation except pursuant to legislation enacted in that behalf and then only in the manner directed by that legislation.

57. Power to licence and regulate credit bureaux.

- (1) In furtherance of the provisions of section 2 (d) of this Act, the Bank shall have power to licence, and to collect, in such a manner as the Bank may deem fit, credit information on the customers of banks and other financial institutions.
- (2) For the purpose of subsection (1) of this section, the Bank shall have power to collect in such manner as the Bank may deem fit from any person or any such credit bureaux, credit information on the customers of banks and other

financial institutions and the Bank may disclose the information so collected in such manner as may be deemed appropriate by the Bank:

Provided that the disclosure of any credit information by the Bank to any person or institution shall be confidential between the Bank and the person or institution to whom the information is disclosed.

- (3) A bank shall before granting a loan, advance or credit facility to any customer, obtain from the Bank credit information on that customer when the amount of the loan, advance or credit facility is up to one million naira or such sum as may be set from time to time by the Bank.

58. Saving

Without prejudice to section 6 of the Interpretation Act, the repeal of the enactments referred to in subsection (2) of section 59 shall not affect anything done under or pursuant to those enactments.

59. Repeal

(1) The Central Bank of Nigeria Act 1991 is hereby repealed.

(2) The following amendment enactments are also consequentially repealed-

- (a) Central Bank of Nigeria (Amendment) Act 1993;
- (b) Central Bank of Nigeria (Amendment) Act 1997;
- (c) Central Bank of Nigeria (Amendment) (No.2) Act 1998; and
- (d) Central Bank of Nigeria (Amendment) Act 1999.

The rights, interests, obligations and liabilities of the Bank existing before the commencement of this Act under any contract or instruments, or in law or in equity apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Bank.

60. Interpretation

In this Act-

“Bank” means the Central Bank of Nigeria established under Section 1(1) of this Act;

“Bank” means a bank licenced under the Banks and Other Financial Institutions Act 1991 or under the repealed Banking Act or any other prior legislation;

“Bank examiner” means a bank examiner appointed pursuant to the Banks and Other Financial Institutions Act 2005;

“Board” means the Board of Directors of the Bank established under section 6(1) of this Act;

“Governor” and “the Deputy Governors” means respectively the Governor and Deputy Governors of the Bank appointed under this Act;

“Officers” or “officers of the Bank” means an officer of the Central Bank of Nigeria;

“President” means the President of the Federal Republic of Nigeria.

61. Citation

This Act may be cited as the Central Bank of Nigeria (Establishment) Act, 2007.

SCHEDULES

FIRST SCHEDULE

[Sections 12 (5) and 54.]

Proceedings of the Board, etc.

1. (1) Not less than three weeks' notice shall be given of each meeting of the Board and such notice shall be sent to every Director at his registered address but where it is necessary to convene an emergency meeting, all reasonable steps shall be taken to give notice to every Director who is at the time in Nigeria.
- (2) A person other than the Directors and the Secretary shall not attend meetings of the Board but the Chairman may request the presence of officers of the Bank when technical matters are under consideration.
2. (1) The Board shall cause minutes to be duly entered in a book provided for that purpose-
 - (a) of all appointments of officers made by the Board;
 - (b) of the names of all Directors present at each meeting of the Board; and
 - (c) of all resolutions and proceedings of each meeting.
- (2) A copy of the minutes shall be circulated at that or succeeding meeting and after approval by the Board, signed by the Chairman.
3. The common seal of the Bank shall be affixed under such conditions as may be determined, from time to time, by a resolution of the Board.
4. A Director shall, on appointment or re-appointment, sign a declaration as in Form 1 in the Annex to this Schedule affirming his allegiance and service to the Bank and pledging himself to observe strict secrecy respecting all transactions of the Bank.
5. A Director having any interest, directly or indirectly in any dealing or business in which the Bank is concerned shall disclose such interest at the meeting of the Board at which the dealing or business is discussed and in no circumstances shall he vote on the matter. If required by the Board to do so, he shall withdraw from the meeting.
6. (1) A Director, officer and other employee of the Bank shall be indemnified by the Bank against all losses, costs and expenses incurred by him by reason of any contract entered into or act or deed done in the proper and careful discharge of his duties. The Bank shall pay all such costs, losses and expenses.
- (2) A Director, officer or other employee of the Bank shall be liable to the Bank for any losses, costs or expenses incurred by the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken

on behalf of the Bank or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, unless due to wilful default in the execution of his duties.

7. In consultation with the Board, the Governor and Deputy Governors shall be responsible for-
- (a) fixing the rate or rates of discount or rediscount and the rate or rates of interest on advances to Government and to other customers of the Bank;
 - (b) devising suitable mechanism to determine rates of exchange at which the Bank shall buy and sell foreign currencies under section 16 of this Act;
 - (c) the appointment of auditors in accordance with section 49 of this Act, the provision of the necessary facilities and the rates of remuneration;
 - (d) the establishment and closing of branches and currency centres;
 - (e) the appointment of Branch Controllers and Currency Officers; and
 - (f) the appointment of officers and other employees:

Provided that the Governor shall have authority to make such appointment as he deems appropriate without consultation with the Board in relation to officers and employees whose salaries do not exceed Central Bank Service Scale 06.

8. (1) The Governor and Deputy Governors shall have special responsibility for-

- (a) the organization of the management of the Bank at its head office, branches and currency centres;
- (b) causing-
 - (i) true accounts to be kept of all transactions entered into by the Bank and of the assets and liabilities of the Bank and of all valuables entrusted to the Bank;
 - (ii) the compilation, form and publication of accounts in accordance with section 50 (2) of this Act;
- (c) the safe-keeping of all the assets of the Bank and the valuables entrusted to the Bank;
- (d) the discharge by officers and other employees of the Bank of the duties placed upon them;
- (e) the supervision of arrangements relating to the issue and redemption of currency notes and coins and all manners connected with the forms, design and composition of currency notes and coins:

Provided that the Director of Currency Operations shall be charged with the direct responsibility under the Governor for specified matters under this subparagraph.

- (2) The Governor shall work out the detailed responsibilities of each of the Deputy Governors; and may assign any of his duties during his absence from duty or at such other time to any of the Deputy Governors as he deems fit.
- (3) Without prejudice to subparagraph (2) of this paragraph, the Governor shall have power to assign or re-assign the Deputy Governors, from time to time, as may be expedient for the performance of the Bank's function under or pursuant to this Act.
9. The books of the Bank shall be kept at the head office of the Bank or at such other places as the Board may, from time to time, determine.
10. The Governor shall formulate, for the approval of the Board, general rules and any subsequent amendments thereto, providing for-
 - (a) the safe-keeping of the common seal of the Bank;
 - (b) the safe-keeping of the assets of the Bank and of valuables entrusted to the Bank;
 - (c) the safe-keeping of stocks or un-issued or redeemed currency and the preparation, safe custody and destruction of plates and paper for the printing of currency notes and discs for the minting of coins;
 - (d) the protection of bank notes and coins in transit;
 - (e) the conditions under which any Zonal Controller, Branch Controller or Currency Officer may be appointed; and
 - (f) the conditions governing discounts and advances;
 - (g) the exercise of dual control and general security throughout the Bank; and
 - (h) such additional arrangement which may be made to ensure the efficient working of the Bank, through proper observance of security and the accuracy of the accounts of the Bank.
11. (1) The Board shall, from time to time as it deems fit, delegate some of its responsibilities to the Committee of Governors.
 - (2) Formal meetings of the Committee of Governors shall take place as often as may be required but not less than once a month.
 - (3) The Committee or Governors shall cause minutes to be duly entered in books provided for that purpose during each of its formal meetings.
 - (4) The Governor shall preside over every meeting but in his absence a Deputy Governor designated by him shall act in his place, and in the absence of both the Governor and any such designated Deputy Governor, one of the other Deputy Governors present shall act as Chairman.
12. The Board by resolution shall, for such purposes as it may, from time to time, decide, authorize the Governor, the Deputy Governors or any officer of the Bank to sign documents relating to all aspects of the Bank's business; provided that such documents are not required by law or common practice

to be given under seal. Any such authorizations shall forthwith be notified in the Gazette.

13. (1) An officer or other employee of the Bank shall not occupy any other Office or hold any other employment whether remunerated or not except with the approval of the Board embodied in a resolution and only in the following capacities-
 - (a) as member of any economic research institution or all commission established by the Federal Government to enquire into any matter affecting currency or banking in Nigeria or into such other subjects relating to the functions of the Bank under this Act;
 - (b) as director or member of the Board or by whatever name called, of any international bank, international monetary authority or economic institution to which the Federal Government shall have interest or give support or approval;
 - (c) as Director or alternate Director of any corporation in Nigeria in which the Bank may participate under paragraph (i) of subsection (1) section 30 of this Act;
 - (d) as member of other agency of the Federal, State and Local Government.
- (2) A remuneration to which any officer or other employee of the Bank is entitled in respect of any appointment made by virtue of the provisions of this Schedule shall be paid directly to the Bank.
- (3) This Schedule shall not prevent the Bank from employing at the Board's discretion and subject to such terms and conditions as shall be laid down by the Board, part-time advisers for particular purposes and for specific periods of time.
14. All officers and employees of the Bank shall be required to sign declarations as in Form 2 in the Annex to this Schedule affirming their allegiance and service to the Bank and pledging themselves to observe strict secrecy respecting all transactions of the Bank.
15. (1) The appointment of a legal practitioner to the Bank and changes in that appointment shall be made by the Board on the recommendation of the Governor.
- (2) Plaints, writs, statement, affidavits and all other documents connected with legal proceedings may be signed and verified on behalf of the Bank by any officer empowered by or under paragraph 12 of this Schedule.
16. The Board may require any officer or other employee to give the Bank, in such manner as it may require, such security as it may regard reasonable for the faithful discharge of his duty.
17. In this Schedule--

“Committee of Governors” means a Committee of the Governor and the Deputy Governors of the Central Bank of Nigeria;

“Director” means a member of the Board of Directors of the Central Bank of Nigeria.

SECOND SCHEDULE

[Section 12 (5).]

Proceedings of the Monetary Policy Committee

1. The MPC shall meet at least four times in a year.
2. The Governor (or in his absence, the Deputy Governor responsible for monetary policy) may summon a meeting on giving not less than 7 days’ notice.
3. The quorum shall be six members two of whom shall be the Governor and a Deputy Governor or two Deputy Governors.
4. The Chair shall be taken by the Governor or, if he is not present, the Deputy Governor responsible for monetary policy.
5. Decisions shall be taken by a vote of all those present at the meeting.
6. In the event of a tie, the Chairman shall have a second or casting vote.
7. The MPC shall submit periodic report of its meetings and activities board of Directors of the Bank.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

Chapter 17

Asset Management Corporation of Nigeria Act, 2010

ARRANGEMENT OF SECTIONS

SECTION:

Part I – ESTABLISHMENT, ETC. OF THE ASSET MANAGEMENT CORPORATION OF NIGERIA

1. Establishment of the corporation.
2. Authorized capital.
3. Head of Office of the Corporation.
4. Objects of the Corporation.
5. Functions of the Corporation.
6. Power of the corporation.
7. Appointment of asset managers.
8. Power of the Central Bank of Nigeria to issue guidelines and directions

PART II – ADMINISTRATION AND MANAGEMENT

9. Establishment and responsibility of the Board.
10. Composition and tenure of the Board.
11. Members of the Board to act in good faith.
12. Remunerations of Board members.
13. Disqualification and cessation of office.
14. Resignation and removal of Board members.
15. Filling of casual vacancy.
16. Declaration of debt obligations and disclosure of interest.
17. Management of the Corporation.
18. Appointment of other staff.

PART III – FUNDS, FINANCES, ACCOUNTS, AUDIT, ETC.

19. Funds, finances, accounts, audit, etc. of the corporation.
20. Books of accounts.
21. Annual report.
22. Report to Central Bank of Nigeria, etc.
23. Audited account.

PART IV – ELIGIBLE BANK, ASSETS ACQUISITION, MANAGEMENT, ETC.

24. Designation of eligible bank
25. Purchase of eligible bank asset by the Corporation.
26. Consideration for purchase of eligible bank assets.
27. Guarantee of Corporation's bonds by Federal Government of Nigeria.
28. Valuation and purchase price of eligible bank asset.
29. Procedure to be followed by eligible bank asset.
30. Corporation not bound to purchase eligible bank asset.
31. Delivery of books, records, etc., to the Corporation upon purchase.
32. Purchase agreement, indemnity, etc.
33. Notice to debtors, etc. of acquisition of eligible bank assets.
34. Effect of acquisition of eligible bank asset by the Corporation.
35. Corporation to have rights of creditors after acquisition of eligible bank asset.
36. Restrictive Collateral to be held in trust.
37. Tainted eligible bank asset.
38. Assistance to Corporation by eligible financial institutions in legal proceedings.
39. Transfer, assignment, etc., by corporation to override restriction on disposal.
40. Power to discharge second or subsequent pledge.
41. Validity of transfer of transfer of interest by document under Corporation's seal.
42. Undisclosed representation, undertakings and obligations to debtors unenforceable against the Corporation.
43. Limitation on liability of Corporation.
44. Indemnification of Corporation by eligible financial institution.
45. Corporation not required to be registered as owner of security.
46. Redemption of debt securities issued by the Corporation.
47. Treatment of assets upon dissolution of corporation.

PART V – SPECIAL POWERS OF THE CORPORATION

48. Powers of the Corporation to act as or appoint a receiver for a debtor company.
49. Custody and possession of debtor's property.
50. Attachment and freezing of debtor's bank account.
51. Special powers in bankruptcy proceedings.

PART VI – SPECIAL DEBT RECOVERY PROCEDURE

52. Special powers in winding up proceeding.
53. Designation of a judge to hear matters.

PART VII – OFFENCES AND PENALTIES

54. Offences and penalties.
55. Prosecution of offences.

PART VIII – MISCELLANEOUS

56. Code of practice.
 57. Power to make regulations.
 58. Power of the Central Bank to supervise and regulate the Corporation.
 59. Regulatory powers and functions of Governor not affected.
 60. Corporation not to be exempted from Capital Gain Tax.
 61. Interpretation.
 62. Citation.
- Schedule.

ASSET MANAGEMENT CORPORATION OF NIGERIA ACT, 2010.

An Act to establish the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria; and for related Matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria:

PART I – ESTABLISHMENT, ETC. OF THE ASSET MANAGEMENT CORPORATION OF NIGERIA

1. (1) There is established the asset management corporation of Nigeria (in this act referred to as “the corporation”).
- (2) The corporation :
 - (a) shall be body corporate with a common seal, perpetual succession; and
 - (b) May sue and be sued in its corporate name.
- (3) Subject to the limitations contained in this act, the corporation may acquire, hold and dispose of movable and immovable property for the purpose of its functions and objects.
- (4) Except as otherwise provided in this act, the corporation shall be independent in the discharge of its functions.
2. (1) The authorized capital of the corporation shall be 10 billion naira, which shall be fully subscribed to by the federal government and held in trust by the central bank of Nigeria and the ministry of finance incorporated in equal proportion of fifty per cent each.
- (2) the authorized capital of the corporation may be increased by such amount as the board may, from time to time, determine, with the concurrence of the board of the central bank of Nigeria and the approval of the president and shall, when so increased, be subscribed to by the federal government and such other subscribers as may be approved by the president on the recommendation of the central bank of Nigeria and ministry of finance.
- (3) The authorized capital of the corporation shall be subject to registration and stamp duties.

3. The corporation shall have its head office in Abuja and may open branches in any part of Nigeria and appoint agents and correspondents as may be approved by the board.
4. The objects of the Corporation shall be to:
 - (a) Assist eligible financial institutions to efficiently dispose of eligible bank assets in accordance with the provisions of this act;
 - (b) Efficiently manage and dispose of eligible bank assets acquired by the Corporation in accordance with the provisions of this act; and
 - (c) Obtain the best achievable financial returns on eligible bank assets or other assets by it in pursuance of the provisions of this act having regard to:
 - (i) the need to protect or otherwise enhance the long-term economic value of those assets,
 - (ii) the cost of acquiring and dealing with those assets,
 - (iii) the Corporation's cost of capital and other assets,
 - (iv) any guidelines or directions issued by the Central Bank of Nigeria in pursuance of the provisions of this Act; and
 - (v) any other factor which the corporation considers relevant to the achievement of its objects.
5. The functions of the Corporation shall be to:
 - (a) Acquire eligible bank assets from eligible financial institutions in accordance with the provisions of this Act;
 - (b) Purchase or otherwise invest in eligible equities on such terms and conditions as the Corporation, with the approval of the Board of the Central bank of Nigeria, may deem fit;
 - (c) Hold, manage, realize and dispose of eligible bank assets (including the collection of interest, principle and capital due and the taking over of collateral securing such assets) in accordance with the provisions of this Act;
 - (d) Pay coupons on, and redeem at maturity, bonds and debt securities issued by the Corporation as consideration for the acquisition of eligible bank assets in accordance with the provisions of this Act;
 - (e) Perform such other functions, directly relating to the management or the realization of eligible bank assets that the Corporation has acquired, including managing and disposing assets acquired with the proceeds derived by the corporation from managing or disposing of eligible bank assets acquired by it;
 - (f) Take steps necessary or expedient to protect, enhance or realize the value of the eligible bank assets that the Corporation has acquired, including:
 - (i) The disposal of eligible bank assets or portfolios of eligible bank assets in the market at the best achievable price,
 - (ii) The securitization or refinancing of portfolios of eligible bank assets, and

- (iii) Holding, realizing and disposing of collateral securing eligible, bank assets; and
 - (g) Perform such other activities and carry out such other functions which in the opinion of the Board are necessary, incidental or conducive to the attainment of the objects of the Corporation.
6. (1) The Corporation shall have powers to:
- (a) Issue bonds or other debt instruments as consideration for the acquisition of eligible bank assets;
 - (b) Maintain a portfolio of diverse assets including equities, fixed income bonds and real estate;
 - (c) Provide equity capital on such terms and conditions as the Corporation may deem fit;
 - (d) Borrow or raise money, with or without the guarantee of the Central Bank of Nigeria (including money in a currency other than the naira) or secure the payment of money in any manner including issuing debentures, stocks, bonds, obligations and debt securities of any kind, and charge and secure any instrument so issued by trust deed or otherwise on the undertaking of the Corporation or on any particular property and rights, present or future, of the Corporation or in any other manner.
 - (e) Initiate or participate in any enforcement, restructuring re-organization, programme of arrangement or other compromise;
 - (f) Enter into contract options and other derivative financial instruments (including in currencies other than the naira) for purposes which include:
 - (i) Eliminating or reducing the risk of loss arising from changes in interest rates, currency exchange rates or other factors of similar nature;
 - (ii) Eliminating or reducing the cost of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business, or
 - (iii) Increasing return on investment;
 - (g) Guarantee, with or without security, the indebtedness and performance of obligations of other entities (provided that the Corporation receives valuable and commensurate consideration for, or direct or indirect advantage from, the giving of the guarantee);
 - (h) Draw, accept and negotiate instruments;
 - (i) Accept any security, guarantee, indemnity or surety;
 - (j) Enter into contracts of insurance with respect to any of its activities and property;
 - (k) Enforce any security, guarantee or indemnity;
 - (l) Compromise any claim or forgive or forbear any debt or other obligation owed to the Corporation in respect of a specified class of eligible bank assets;

- (m) Open and maintain bank accounts, including accounts in currencies other than the naira, and carry out necessary bank transactions;
 - (n) Form or acquire a wholly a subsidiary or form or acquire an interest in a holding company for the purpose of performing any of it functions;
- Compromise, forgiveness or forbearance will result in a failure to recover the price by the Corporation for the acquisition of the eligible bank asset, only be exercisable with the approval of the minister of Finance acting on the recommendation of the Central Bank of Nigeria that it is the public interest so to forbear or forgive.
- 7. Notwithstanding anything to the contrary contained in this Act, the Corporation may appoint on selective competitive basis.
 - (a) asset managers to manage assets as may be specified by the Board; and
 - (b) Recovery agents for the purpose of recovering debts due to the Corporation or debt acquisition of eligible bank assets as may be specified by the Board.
 - 8. The Central Bank of Nigeria, in consultation with the Federal Ministry of Finance, may issue guidelines and directions in writing to the Corporation in connection with the performance of any of the corporation's function under this Act.

PART II – ADMINISTRATION AND MANAGEMENT

- 9. (1) There is established for the Corporation the Board of Directors (in this Act referred to as “the Board”) which shall be responsible for:
 - (a) The attainment of the objectives of the Corporation;
 - (b) The policy and general supervision of the affairs of the Corporation; and
 - (c) Such other functions conferred upon it by any other provision of this Act.
- (2) The Board may delegate any part of its responsibilities under subsection (1) of this section and under any other provision of this Act as it may deem fit.
 - (a) Give security for any debt, obligation or liability of any company referred to in paragraph (n).
 - (b) Enter into a partnership or joint venture for the purpose of performing any of its functions.
 - (c) Establish a trust or participate in a trust as trustee or beneficiary;
 - (d) Borrow or lend debt securities, including but not limited to, equity and debt instruments;
 - (e) Invest its funds as the Board may, from time to time, determine;
 - (f) Sell or dispose of the whole or any part of the property or investments of the Corporation, either together or in portions, for such consideration and on such item as the Board may approve;

- (g) Engage on competitive basis, from time to time, such consultations and advisers and other services providers as are necessary or expedient for the performance of its functions; and
 - (h) Do all such other things as the Board considers incidental to or conducive to the attainment of any of the Corporation's functions under this Act.
- (2) The Corporation may carry out any of its functions and exercise any of its powers;
- (a) Within or anywhere outside Nigeria;
 - (b) Alone or in conjunction with others; and
 - (c) By or through an agent, wholly owned subsidiary of the Corporation, contractor, factor or trustee.
- (3) Except as otherwise provided in this Act, the Corporation may carry out any of its functions without the consent or approval of any other person or authority.
- (4) For the purpose of subsection (1) (g) of this section "other entities" means subsidiaries or special purpose vehicle set up by the Corporation
- The power of the Corporation to compromise any claim or forgive or forebear any debt or other obligation owed to the Corporation in respect of a specified class of eligible bank assets shall, where such
- 10.(1) The Board shall consist of the following members to be appointed by the President subject to the confirmation of the senate:
- (a) A part-time chairman who shall be a nominee of the Federal Ministry of Finance in consultation with the Minister;
 - (b) A Managing Director who shall be the Chief Executive Officer of the Corporation nominated by the Central Bank of Nigeria;
 - (c) A Managing Director who shall be nominated by the Central Bank of Nigeria in consultation with the Minister; and
 - (d) 5 other non-Executive Directors, 2 to be nominated by the Federal Ministry of Finance, 2 by the Central Bank of Nigeria and one by the Nigeria Deposit Insurance Corporation.
- (2) A person shall not be appointed as a member of the Board unless such a person possesses 10 years cognate financial experience at a senior management level or such other relevant experience as may be prescribed by the Central Bank of Nigeria.
- (3) A member of the Board appointed pursuant to this section:
- (a) shall hold office for a term of five years; and
 - (b) may be eligible for reappointment for another term of five years and no more.
- (4) The provisions contained in the schedule to this Act, shall have effect with respect to the proceedings of the Board and the other matters contained therein.

11. In the discharge of their responsibilities, members of the Board shall act in utmost good faith, with care, skill and diligence.
12. Members of the Board shall be paid such remunerations and allowances as the Central Bank of Nigeria may, from time to time, determine and subject to the approval of the Minister.
13. A person shall not be appointed or remain a member of the Board if he is:
 - (a) adjudged bankrupt or suspends payment to, or compounds or makes an arrangements with, his creditors;
 - (b) found guilty of misconduct in relation to his duties;
 - (c) convicted of an offence involving fraud or dishonesty or other offence the maximum penalty for which exceeds imprisonment for 6 months.
 - (d) a debtor to an eligible financial institution and the debt owed qualifies as an eligible bank asset;
 - (e) disqualified or suspended from practicing his profession in Nigeria by order of a competent authority made in respect of him personally; or
 - (f) Disqualified or restricted from being a director of a financial institution.
14. (1) A member of the Board may at any time resign his office by giving at least one month's notice in writing to the President through Governor of his intention to do so.
- (2) The President, upon the recommendation of the Governor, may remove a member at any time from membership of the Board if;
 - (a) the member is disqualified on any of the grounds specified in section 13 of this Act;
 - (b) the member:
 - (i) his become incapable, through illness or injury, of performing his functions; or
 - Has contravened the provisions of this Act;
 - (c) A conflict of interest has risen in relation to the member; or
 - (d) His removal appears to be necessary or expedient for the effective performance of the functions of the Corporation.
15. If a member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Federal Ministry of Finance, the Central Bank of Nigeria (CBN) or the Nigeria Deposit Insurance Corporation (NDIC), as may be applicable, shall be appointed by the President for the remainder of the term of office of the member whose dead, resignation, retirement, disqualification or removal occasioned the vacancy.
16. (1) All members of the Board shall, before assumption of duty, declare in writing to the Board their personal debt and pecuniary obligations to eligible financial as well as those of their family members or those of their close business associates known to them or any company or firm in which they own

such significant shareholding as may be prescribed by the Central Bank of Nigeria.

Or those of their business association known to them on any company or from in which they own such significant shareholding as may be prescribed by the central bank if Nigeria.

- (2) If a member of the board has pecuniary interest or other beneficial interest in and material to a matter that falls to be considered by the Board, he shall:
 - a) Discuss to the members of the board the nature of his interest in advance of any consideration of the matter;
 - b) Not influence nor seek to influence a decision to be made in relation to the matter;
 - c) Take no part in any consideration of the matter;
 - d) Absent himself from the meeting or that part of the meeting during which the matter is described; and
 - e) Not vote or otherwise act on a decision relating to the matter.
- (3) If a member declares an obligation or discloses an interest pursuant to subsection (1) or (2) of this section, the declaration or disclosure shall be recorded in the minutes of the meeting of the board or otherwise duly recorded.
- (4) All employees of the corporation shall, within one month of employment, declare in writing to the corporation their personal debt and pecuniary obligations (interest) to eligible financial institutions as well as those of their family members of close business associates known to them, any company or firm in which they own such significant shareholding as may be prescribed by the central bank of Nigeria.
- (5) A member of the board or any employee of the corporation shall not either directly be involved in the purchase of any assets the corporation.
- (6) The managing director shall have responsibility for the day-day management of the affairs of the corporation.
- (7) The managing director shall be responsible to the board for the performance of his functions and the implementation of the corporation's strategic plans objectives.
- (8) The functions of the management director shall be performed during his absence by one of the executive directors designated by him for the purpose.
- (9) The terms and conditions of service of the managing director and the executive directors shall be determined by the board from time to time.
- (10) There shall be appointed for the corporation by the board a secretary who shall be a legal practitioner who has been so qualified for not less than ten years.

The secretary shall:

- a) Issues notices of meetings of the boards,
- b) Keep records of the proceedings of the board, and
- c) Carry out such duties as the managing director or the board may, from time to time, direct.

PART III- FUNDS, FINANCES, ACCOUNTS, ADULT, ETC.

19.(1) There shall be established for the corporation a fund which shall consist of:

- a) authorized capital provided by the subscribers to the capital of the corporation;
- b) income from the management and disposal of eligible bank assets acquired by the corporation;
- c) investment income of the corporation;
- d) moneys borrowed from an source in accordance with the provisions of this act with the approval of the board; and
- e) money from any other sources as may be approved by the board.

(2) There shall be chargeable to the fund

- a) Amounts payable to the members of the board,
- b) Remunerations and other costs of employment of staff of the corporation.
- c) All expenses incurred on behalf of the corporation;
- d) Interest on the payment of moneys borrowed on behalf of the corporation
- e) Amounts payable for the redemption of bonds and debt securities issued by the corporation;
- f) Commission or fees payable to any agent or consultant engaged by the corporation; and
- g) Any other payment for anything incidental to or in connection with the functions of the corporation under this Act.

20.(1) The corporation shall cause to be kept proper books of accounts with respect to all the transactions of the corporation in such form and in compliance with such accounting standard as the central bank of Nigeria may specify the regulations.

(2) For the purpose of subsection (1) of this section, proper books of account shall deemed to be kept with respect to transactions if such books are necessary to explain such transactions and give a true and fair view of the state of affairs of the corporation are kept by as may be prescribed by the central bank of Nigeria.

(3) The corporation shall keep in the form that the central bank of Nigeria may direct proper and expended by it and all financial transaction undertaker in the performance of its functions.

- 21.(1) Not later than three months after the end of each financial year, beginning with the financial year ending 2010, the corporation shall submit a report (in this act referred to as an “annual report”) to the ministry finance and the central bank of Nigeria of its activities during the financial year concerned.
- (2) An annual shall be in such form and shall include such information, as may be specifies by the central bank of Nigeria.
- (3) The financial year of then corporation shall begin on the 1st day of January and end on the 31st of December or as may be determined by the approval of the central bank of Nigeria.
- 22.(1) The ministry of finance or the central bank of Nigeria many require the corporation to report to it at any time and in any format that the ministry of finance of the Central Bank of Nigeria may direct on any matter, including the finance of the Central Bank of Nigeria may direct on any matter, including any information or statistics relating thereto.
- (2) The corporation shall submit within every year, quarterly report of its operations as at when due, to the both houses of the national assembly through the relevant standing committees of the national assembly.
- 23.(1) The corporation shall submit its accounts within 4 months after the end of each financial year to such independent firm of auditors’ from a list of auditors approved by the auditor-general for the federation.
- (2) The corporation shall, within six months after the end of each financial year, publish in widely available media and present a copy of the accounts as audited to the national assembly, the ministry of finance and the central bank of Nigeria.

PART IV ELIGIBLE BANK ASSESTS ACQUISITION MANAGEMENT, ETC.

24. The central bank of Nigeria may designate through guidance any class of bank assists as eligible bank assets.
- 25.(1) The corporation may, subject to the provisions of this Act, within 3 months of the designation of any asset as eligible bank asset in pursuance of section 24 specifying a class of bank assets as an eligible class of bank asset. Purchase on a voluntary basis, eligible bank assets from eligible financial institution desirous of disposing of such eligible bank assets at value and price to be determined in accordance with the provisions of section 28 of this act provided that the central bank of Nigeria may extend the period specified in this section for a further period not exceeding 3 years.
- (2) The central bank of Nigeria shall by regulation prescribe the maximum percentage of eligible class of bank assets which ineligible financial institution

may retain in its books and any eligible bank assets above the prescribed threshold shall be offered to the corporation for accusation.

- 26.(1) The consideration to the finished by the corporation for an eligible bank asset shall be seven years bonds of such other debt securities of such form of consideration as may be approved by the central bank of Nigeria.
 - (2) Bonds or other debt securities issued by the corporation in pursuance of subsection (1) of this section quality.
 - a) As an instrument in which the central bank of Nigeria may invest under the central bank of Nigeria act.
 - b) As an instrument in which pension funds may be invested under the Pension Reforms Act, 2004, and
 - c) As an institution for the purpose of section 28 of the Central Bank of Nigeria Act.
 27. Bonds or other debt securities issued by the corporation in pursuance of section 6(1) and 26 of this Act shall be deemed to qualify for the grant of guarantee under section 47 of Fiscal Responsibility Act, 2007, and shall accordingly be guaranteed by the federal government of Nigeria.
 28. The valuation of, and purchase price of eligible bank assets shall be determined in accordance with guidelines issued from time to time by the central of Nigeria.
- Provided that in prescribing parameters for the valuation of and purchase price of eligible bank assets, the central bank of Nigeria shall obtain and be guided by independent advice, publish and make widely available the valuation basis and ensure consistent application of the valuation parameters.
29. An eligible financial institution desirous of disposing of its eligible bank assets to the corporation shall:
 - (a) Apply to the corporation such form and manner as the corporation may by regulation prescribe;
 - (b) Provide the corporation with information, warranties, representations and indemnities in such form and in such manner as may be required by the corporation about the eligible bank assets and disclose in utmost good faith, all matters and circumstances in relation to the eligible bank asset that may materially affect the corporation's decision in acquire the eligible bank or the value that the corporation may place on the assets and
 - (c) Produce to the corporation for inspection the credit facility documentation, books and records kept in connection with the eligible banks assets.
 30. The corporation may acquire an interest in an eligible bank assets of an eligible financial institution of the corporation considers it necessary or desirables to do so and shall acquire any eligible bank assets if so requested by the Nigerian

Deposit Insurance Corporation acting in consultation with the central bank of Nigeria in pursuance of section 38(2)(d) of the Nigeria Deposit Insurance Corporation Act.

31. Where the corporation has acquired an eligible bank assets, the asset, the eligible financial institution from which the eligible bank assets was acquired shall deliver to the corporation or its nominee all its books and records in relation to the eligible bank asset concerned and any document of title that the eligible financial instruments necessary to properly document the acquisition.
32. An eligible financial institution from which the corporation has required an eligible bank asset shall enter into a purchase agreement with the corporation in connection with the eligible bank asset acquired and the purchase agreement, indemnify the corporation for any loss suffered in the event that the collateral turns out to be invalid or otherwise unenforceable.
33. (1) As soon as possible, after the acquiring of an eligible bank asset from an eligible financial institution, the eligible financial institution shall notify the relevant debtor, associated debtor and guarantor or surety of the debtor and any other person that the corporation directs, of the acquisition of the eligible bank asset by the corporation.
(2) The corporation shall not be liable for any failure or delay in notifying any person under subsection (1) of this section and such failure or delay shall not invalidate the eligible bank asset concerned.
34. (1) Subject to the provision of the land use act and section 36 of this act, where the corporation acquires an eligible bank asset, such eligible bank asset shall become vested in the corporation and the corporation shall exercise, all the rights and power and subjects to the provisions of this act become subject to all of the obligations of the eligible financial institution from which the eligible bank asset was acquired to relation to the bank asset the debtor concerned and any guarantor, surely or liquidator, examiner or any other person concerned and the eligible financial institution shall cease to have those rights and obligations.
(2) Subjects to the provisions of the Land Use Act and section 36 of this Act, the vesting of an eligible bank asset in the corporation and the assignment of every relevant contract relating to an eligible bank asset in the corporation upon the acquisition of an eligible bank asset by the corporation as contemplated in subsection (1) of this section shall take effect and be effective notwithstanding any:
(a) Contractual restriction on the acquisition, assignment or transfer of the bank asset or any part thereof or any contract relation thereto; or

- (b) Requirement for a consent, notification, registration. Authorization or licence (by whatever name and however described)
 - (3) Without prejudice to the provisions of subsections (1) and (2) of this section, the corporation may direct eligible financial institution to hold an eligible bank asset or relevant contract deemed vested in, or assigned to the corporation by the provisions of subsection (1) of this section and exercise any such right or power in relevant contract at the direction of the corporation for the sole benefit of the corporation and shall in relation thereto be subject to the duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to the eligible bank assets and any relevant contracts deemed assigned by the provisions of this subsection (1) of this section.
 - (4) Any property, money or other pecuniary benefit received by an eligible financial institution in the course of the holding any eligible bank asset acquired by the corporation or any relevant contract relating thereto or in exercising any right pursuant to subsection (3) of this section shall be held as bare trustee, in trust for the corporation, and the sale benefit off the corporation and turn over to the corporation and shall not be taken to be asset of the eligible financial institution, or accounted for as such in the books of the eligible financial institution.
- 35.(1) For the avoidance of doubt after the corporation has acquired an eligible bank asset and subject in any exclusion stated in the purchase agreement relating thereto the corporation shall be entitled to exercise all rights and power in relation to the eligible bank asset and any security interest concerned to the eligible bank asset.
- (2) The corporation shall be entitled to the benefit of any right of set-off held by an eligible financial institution against any person whether under the credit facility to the eligible bank asset concerned or any other right by directing the eligible financial institution to pay an amount equal to the benefit of the right of set-off to the pay corporation to meet any obligation of that other person to the corporation, whether actual or contingent.
 - (3) The eligible financial institution shall exercise the right of set-off or combination in this section in trust for and only for the benefit of the corporation.
 - (4) Without prejudice to the generality of subsections (1) and (2) of this section, the corporation may;
 - (a) Take any action, including court action, that the eligible financial institution could have taken to protect, perfect or enforce any security, right, interest, obligation or liability,
 - (b) Realize any security that the eligible financial institution could have realized.

- (c) Call up any guarantee that the eligible financial institution could have called up.
 - (d) Participate to the same extent as the eligible financial institution could have participated in any resolution, workout, programme of arrangement and restrictions reorganization, or insolvency proceeding in relation to the eligible bank asset, and
 - (e) Exercise any power by the conferred any document that forms part of the eligible bank asset of reviewing or amending any term of condition of any part of the eligible bank asset.
- 36.(1) Upon acquisition by the corporation of an eligible bank asset secured in whole or in part by landed property or by collateral or security interest which restricts the alienation or contract as matter of law (in this act referred to as “Restrictive collateral is acquired shall hold such hold such restriction collateral, as bare trustee, in trust for and the sole benefit of the corporation and shall at the sole direction of the corporation realize or otherwise deal with such restrictive collateral as may be directed by the corporation and shall turn over all proceeds received from such realization or dealing to the corporation.)
- (2) Where the restrictive collateral contains a power of attorney in favour of the eligible financial institution concerned such eligible financial institution shall as an attorney act at the direction of the corporation appoint the corporation as receiver or receiver-manager over the restrictive collateral, and such appointment, whether by deed or otherwise, shall not withstanding anything in the restrictive collateral or any other law be deemed to be valid and effectual.
- 37.(1) Notwithstanding anything to the contrary contained in this Act, where an eligible bank claimed eligible bank assets listed in subsection (2) of this section.
- (a) The borrower or other obligor connected with such tainted eligible asset shall not be entitled to and shall not be granted, any forbearance waiver, or debt forgiveness by the corporation; and
 - (b) The corporation shall pursue, to the fullest extent possible, all lawfully civil and criminal remedies against any such borrower or other obligor connected with such tailed eligible bank asset.
- (2) Any eligible bank assets which falls into any of the following asset.
- (a) Loans, credits or other financial accommodation obtained by insiders of or persons to otherwise connected with, the eligible financial institution which granted the loan, credit or other financial accommodation where such loan, credit or other financial accommodation was:
 - i. Obtained I breach of the rules and regulations of the eligible financial institution which granted the loan, credit or other financial accommodation.

- ii. Secured against the shares or other securities of the eligible financial institution accommodation, or
- iii. In breach of rules and regulations of the central bank of Nigeria.
- (b) Loans, creditors and others financial accommodation obtained or applied by insider or persons related to otherwise connected with the eligible financial institution towards the purchase of the shares of the eligible financial institution which granted the loan credit or other financial accommodation or
- (c) Loans credits or other financial accommodation granted or obtained.
- (i) By insider of or person related to or otherwise connected with the eligible financial institution which granted the loan, credit or financial institution which granted the loan, credit or financial accommodation, in breach of the provision on financial assistance rules or regulations investment and securities act or rules under the Companies and Allied Matters Act,
- (ii) For the purpose of market manipulation and market rigging or for the acquisition of shares in breach of the investments and securities Act or rules or regulations made thereunder, and
- (iii) In breach of any law, including but not limited to laws relating to banking and company
- 38. Where the corporation is a party to any legal of any proceedings an acquired eligible bank asset, the eligible financial institution from which the eligible asset was acquired shall, if the corporation so request provide the corporation with any assistance reasonable required by the corporation, for the purpose of the proceedings including the:
 - a. Provision of any documents or information;
 - b. Making available of any witness; and
 - c. Provision of any evidence by way of affidavit or otherwise.
- 39. The corporation may transfer, assign sell or otherwise dispose of any acquired eligible banks asset to any notwithstanding;
 - (a) A contractual requirement or any requirement under any enactment for the consent of notice to or document from any person to the disposal or
 - (b) A provision of any enactment prohibiting or restricting the disposal.
- 40. Where the corporation has required an eligible bank asset that is secured by a pledge or charge, but the pledge or charge is a second or subsequent pledge or charge, the corporation, ay regardless of whether a vesting order has been made in relation to the security, redeem or discharge anyone or more of the prior pledges or charges in accordance with its terms.
- 41.(1) Any instrument under the seal of the corporation that is expressed to convey any interest in an eligible bank asset to another person shall be taken for all purposes to convey the interest so expressed to convey.

- (2) An instrument referred to in subsection (1) of this section should without any further assurance operate to extinguish the interest of any other charge or pledge which has priority to the interest of the corporation and has not been redeemed or discharged under section 39 of this act.
42. Where in relation to an eligible bank asset acquired by the corporation, an eligible financial institution falls to:
- (a) Disclose to the corporation any representation or obligation which the eligible financial institution made or undertook in favour of a debtor or any other person which would affect the creditors' rights in relation to the eligible bank asset, or
 - (b) Record a note or memorandum specifying the consideration in respect of such representation or obligation may be enforceable only in damages by the debtor or any other person only against the eligible financial institution and not the corporation.
43. (1) Nothing in this act shall:
- (a) Render a note or memorandum specifying the consideration paid in respect of such representation, breach of duty, breach of trust or other legal or equitable wrong committed by an financial institution, and
 - (b) Deprive any person of any remedy against an eligible financial institution in respect of a legal or equitable wrong referred to in paragraph (a) of the section.
- (2) An action shall not be or concerned against the corporation until the expiration of 30 days' notice in writing to the corporation giving details of the alleged wrong, date and remedy sought.
- (3) If, after the explanation of the 30 days' notice stated in subsection (2) of this section, the corporation has not responded, the party concerned may issue a writ or other expiating process against the corporation provided always that action shall be concerned or maintained against the corporation or any of its shareholders, officers and directors for anything done intended to be done or purported to be done in good faith in the execution of duties, power and obligation imposed on the corporation or any of its shareholders, directors or office.
44. If the corporation so directs an eligible financial institution from which the corporation has acquired an eligible bank asset shall identify the corporation and its officers against any inability or loss.
- (a) Arising from any error, omission or misstatement in any information or certificate provided to the corporation by or on behalf of the eligible financial institution; or
 - (b) In respect of any claim, award payment or damages which the corporation becomes liable to play to any person where the liability arises in connection

with a cause of action occurring prior to the date of transfer or as the case may be any proportion of such liability is attributed to period prior to the date of transfer.

45. Where an eligible bank asset has been acquired by the corporation notwithstanding anything contained in any law, the corporation shall not be required to become registered as owner of such security under any law for the time being in force.

Provided that the corporation may, at its discretion, elect to register any interest capable of registration.

- 46.(1) The corporation may from time to time, after consultation with the minister and Governor, redeem and cancel debt securities issued by the corporation under the act.

- (2) The corporation shall create a sinking fund or any other fund, for the purpose of covering any shortfall that may be required to meet its obligations to redeem its debt securities, in such manner as may be jointly specified by the federal ministry of finance and the central bank of Nigeria.

47. The assets of the corporation remaining after the redemption of all debt securities and discharges of all payment obligations shall at its eventual dissolution be transferred to the fund of the corporation and corporation and such is not liquidated or paid over the corporation within 10 days from the date of the order for payment thereof, the corporation may apply to the court to issue a receiving order against the debtor.

- (2) Subject to subsection (1) of this section, it shall not be necessary for the debtor to commit an act of bankruptcy or for the corporation file a bankruptcy petition or any of the conditions precedent for the grant of a receiving order specified under the bankruptcy act to be satisfied before the court grants receiving order against the debtor.

- (3) Notwithstanding the adjudged bankruptcy act, where a receiving order is made against a debtor under this act, the court may adjudge the debtor bankrupt.

- (4) Where a debtor is adjudged bankrupt under the act, the court may, on the application of the corporation, appoint the official receiver or authorize the corporation to assume the office of trustee of the property of the debtor.

- (5) A trustee appointed under this act shall have all the powers of a trustee of an adjudged bankrupt act and shall perform his duties in accordance.

- (6) An act, thing, directive or permission or requires to be done or given by the committee of inspection or by the creditors under the bankruptcy act may be one or given by the court on the application of the trustee.

- (7) Any person adjudged a bankrupt under this act shall be deemed adjudged a bankruptcy Act which shall have effect with such modifications as are contained in this act, and a trustee appointed under this act may seek the directive of the court in respect of any act or thing to be done by anyone under the Bankruptcy Act.
- 52.(1) Where the court gives a decision against a body corporate in a debt recovery action under this act, requiring the debtor company to pay any sum to the corporation and such is not liquidated or paid over to the corporation within 90 days from the date of the order for payment, the corporation may apply to the court to issue a winding up order against the debtor company.
- (2) Where a winding up order is made the court may on the application of the corporation appoint the official receiver or some other fit person to assume the office of a liquidator to wind up the affairs of the debtor company.
- (3) Any liquidator appointed pursuant to this act shall have the power of a liquidator under the companies and allied matters act and shall perform his duties in accordance with the Act.
- (4) An act thing directive or permission authorized or required to be done or given by the committee of inspection or by the creditors under the companies and allied matters act be done or given by the court on the application of the liquidator.
- (5) Any winding up order made against any debtor company under this act shall be deemed to have been made under the companies allied matters act and the provisions of the companies and allied matters act shall have effect with such modifications as are contained in this act.

PART VI-SPECIAL DEBT RECOVERY PROCEDURE

53. The chief judge of the federal high court may designate any judge of the federal high court to hear matters for the recovery of debts owed to the corporation or an eligible financial institution and other matters arising from the provisions of this act to the exclusion of any other matter for such period as may be determined by chief judge.

Part Vii- Offences and Penalties

- 54.(1) A person who:

- (a) Makes any false claim in any material respect in relation to any movable or immovable property used as collateral for any loan with a view to defeating the realization of the debt commits an offence and is liable on conviction to a fine of not less than 5 million naira or imprisonment of term not less than 3 years or to both such fine and imprisonment;
- (b) Is charged with an offence under this but the evidence establishes an attempt to commit the offence may be convicted of attempt to commit that offence,

although the attempt is not separately charged and punished as provided under this act, or

- (c) Is charged with an offence under this act but the evidence establishes the commission of a lesser offence under this act, the offender shall be convicted of that lesser offence and punished as provided under this act and
- (d) Aids abets counsels procures or conspires with any other person in commit any offence under the act, commits an offence and is liable on conviction to a time not less than 5 million naira imprisonment for a term not less than 3 years or to both such time and imprisonment.
- (2) A person who is indebted to or having a customer of an eligible financial institution or otherwise connected to the debt, negligently, wilfully or recklessly makes a statement or gives any information knowing it to be false in relation to loan, an advance, guarantee or any other credit facility commits an offence under this act and is liable on conviction to a fine not less than 5 million naira or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.
- (3) Where a person referred to in subsection (1) and (2) of this section is a body corporate, any of its directors, manager, officers, employees or partners who is responsible or is in any way connected with the doing of any of the acts referred to in those subsections is guilty of the same of the offence under this act and liable on conviction to the same punishment.
- (4) The conviction of a body corporate for any of the offence under subsection (1) and (2) of this section be a ground for winding up of the affairs of that body corporate.
- (5) Save as otherwise specifically provided under the provisions of this act, any person contravenes or attempts to contravene or aids as abets the contravention of the provisions of this act commits an offence and is liable on conviction to a fine not less than three million naira or to imprisonment for a term not less than two years or both such fine and imprisonment.
- (6) In this section reference to eligible financial institution includes the corporation.
- 55. Prosecution of offences under this act shall be the attorney-general of the federal or any other legal practitioner with the consent of the attorney-general of the federation

PART VIII- MISCELLANEOUS

- 56.(1) The corporation shall prepare codes of practice for approval by the central bank of Nigeria to govern.
 - a. The conduct of officers of the corporation

- b. Serving standards for acquired eligible bank asset;
 - c. Risk management,
 - d. Custodial service for eligible bank assets and
 - e. Any other matter as may be directed by the governor
- (2) If, in the opinion of the governor, adequate provision has not made in a code of practice drawn up by the corporation under subsection (1) of this section of this section, the governor require modifications to be made to the code of practice.
- (3) The corporation shall publish the code of practice, issued under this section as approved by the central bank of Nigeria, in the official Gazette.
57. The Central Bank of Nigeria may make regulations issued under this section as approved by the Central Bank of Nigeria, in the official provisions of this Act.
58. The Central Bank of Nigeria shall have power to supervise and regulate the activities and functions of the corporation and may in this regards appoint examiners and any other person to carry out special or routine examination of the books and affairs of the corporation.
59. Nothing in this act shall be constructed as a waiver of any regulatory or statutory power or function of the central bank of Nigeria and the governor in relation to any eligible financial institution.
- 60.(1) The corporation shall be examined from the provisions of:
- (a) Capital Gains Tax Act or other law of the National Assembly on capital gains;
 - (b) The Companies Incomes Tax Act, and
 - (c) the stamp duties act
61. In this Act:
- “Board of the bank” means the board of directors of the Central Bank of Nigeria established pursuant to section of this act;
- “Court” means the Federal High Court;
- “days” means working days,
- “debt” means any establish facility, issue risk whether performing on non-performing, including interest thereon;
- “debtor” or debtor company “means borrower, beneficiary of an eligible bank asset and includes a guarantor of a acquisition of a debtor, guarantor or director of a debtor company;
- “eligible bank assets” means assets of eligible financial institutions specified by the governor as being the eligible for acquisition by the corporation pursuant to section 24 of this act;
- “eligible financial institution” means a bank duly licenced by the central bank of Nigeria to carry on the business of banking in Nigeria under the banks and other financial institutions act, and shall include a bank or other financial

institution, whose banking licence has been revoked by the central bank of Nigeria, pursuant to the banks and other financial institutions act
 “governor” means the governor of the Central Bank of Nigeria,
 “hours” means working hours; and
 “Minister” means the minister charged with the responsibility for finance.

2. The act may be cited as the asset management corporation of Nigeria Act, 2010

SCHEDULE

PROCEEDING OF THE BOARD

Board To Regulate Proceedings

1. Except as may otherwise be provided in this schedule, the board shall regulate, by standing orders or otherwise, its procedure and business.

Trimming of meeting

2.-(1) Meetings of the board shall take place as often as maybe required, but not less than 9 times in every financial year of the corporation

(2) The board shall hold its first meeting on the date of inauguration of the board or as soon as it is practicable after that date.

(3) The board shall meet whenever it is convened by the chairman, and if the chairman is requested to do so by notice given to him by not less than 2 other members, he shall convene a meeting of the board to be held within 14 days from the date in which the notice was given.

Committee of the board

3. The board may establish such member of committees as it deems fit and may also establish such advisory committees which may include persons who are not members of the board as it considers necessary;

Provided that the report of any such committee shall be effective unless approved by the board.

Quorum

4.-(1) the quorum for the meeting of the board shall be 5 members 2 of whom must be executive directors and if there is a vacancy on the board, 3 members one of whom must be an executive director

(2) a meeting held while there is a vacancy in the board shall be valid notwithstanding the vacancy, so long as there is quorum.

Presiding officer

5. At meeting of the board of the chairman is;

(a) Present, he shall preside over the meeting; and

(b) Absent or the office of chairman is vacant, the appointed members present shall choose of them to preside over the meeting

Voting

6. At a meeting of the board each member present shall be entitled to one vote and any question on which a vote is required shall be determined by a majority of votes of members present and voting but in the case of an equal division of votes, the chairman or the other members presiding over the meeting shall have a casting vote.
7. Where the board seeks the advice of any person on a particular matters the board may invited by virtue of this paragraph shall not be entitled to vote at any meeting of the board and shall not count towards the quorum.

Tele-conference meeting

- 8.-(1) in addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time and such a meeting is referred to in this section as a “tele-conference meeting”.
- (2) A member of the Board who participates in a tele-conference meeting shall be taken for all purposes to have been present at the meeting.
- (3) the Board may establish procedures for tele-conference meetings (including recording the minutes of such meetings) in its minute’s book.

Resolutions by circulation

- 9.-(1) The Board may pass a resolution without a meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution in the document.
- (2) A resolution referred to in subparagraph (1) may be passed by the members or some of them signing separates copies of the document referred to in that subparagraph if the data and time of each signature is indicated on the document concerned.
- (3) A resolution passed in accordance with this paragraph is taken to have been passed at the time on which the last member signs.
- (4) Subject to the provisions of this Act, the Corporation may validly act notwithstanding one or more vacancies among the members of the Board.
- 10.-(1) The Board shall as soon as possible after the coming into force of this Act, provide the Corporation with a seal.
- (2) The seal of the Corporation shall be authenticated by the signatures of the Managing Director and Secretary to the Board or any 2 directors.
- (3) A document purporting to be an instrument made by and sealed with the seal of the corporation and purporting to be authenticated in accordance with subparagraph (2) of this paragraph, shall be received in evidence and be taken to be an instrument unless the contrary is shown.

- (4) In the case of a contract or instrument that's, if entered into executed by an individual, would not be required to be under seal, the Board may delegate the authority to enter into such a contract or execute such instrument as the Board may deem fit.

Chapter 18

Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act CAP F2 LFN, 2004

ARRANGEMENT OF SECTIONS

PART I

Powers of the Federal High Court under this Act

Powers of the Court.

Power of search, etc.

Power to control property of debtor or accused.

Jurisdiction unaffected by separation from service.

PART II

Recovery of debts owed to failed banks

Recovery of debt owed to failed banks.

Proof of debt.

Application for recovery of debt.

Debtor to appear before Court to show cause.

Hearing and judgment.

Withdrawal of application.

Sale of property.

Inadequate securities, etc.

Exclusion of statutes of limitation.

Rules of procedure, etc.

PART III

Offences and penalties

Offences.

Penalties.

Attempt to commit offence, etc.

Offence by bodies corporate.

Evidence of accomplices, etc.

Prosecutions, rules of procedure, etc.

Powers of arrest.

Bail.

PART IV

Miscellaneous

Inconsistency

Interpretation.

Short title.

SCHEDULE

FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL MALPRACTICES IN BANKS ACT

An Act to provide for the recovery of debts owed to failed banks and for the Trial of Offences relating to Financial Malpractices in Banks and other Financial Institutions.

[9th November, 1994]

[Commencement.]

PART I

Powers of the Federal High Court under this Act

1. *Powers of the Court*

- (1) The Federal High Court (in this Act referred to as “the Court”) shall have power to-
 - (a) recover, in accordance with the provisions of this Act, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central Bank of Nigeria;
 - (b) try the offences specified in Part III of this Act;
 - (c) try the offences specified in the Banks and Other Financial Institutions Act and the Nigerian Deposit Insurance Corporation Act; and
 - (d) try other offences relating to the business or operation of a bank under any enactment.
- (2) The Court shall exercise exclusive jurisdiction over all ancillary matters, including remand, bail and any other preliminary issues connected with an offence or hearing over which the Court has jurisdiction.
- (3) The Court shall, in the exercise of its powers under this Act-
 - a) conduct its proceedings in such manner as to avoid undue delay;
 - b) lift the corporate veil of a body corporate, where it is necessary for the purpose of revealing its members who may be-
 - (i) guilty of an offence under this Act; or
 - (ii) liable, jointly or severally, for the debts owed by the corporate body to a failed bank;

- c) subject to this Act, adopt its own procedure, where expedient, to ensure speedy determination of \cases before it.
- 1) The Court shall have power to admit and act on any evidence which it considers relevant in any civil or criminal proceedings notwithstanding that the evidence is inadmissible under any other law or enactment.

2. Power of search, etc.

Notwithstanding the provisions of any other enactment conferring power to search, if the Court is satisfied that there is a reasonable ground to suspect that there may be found in any building or other place whatsoever, any money or other property or any book, record, account, statement or information in any other form whatsoever which, in its opinion, is or may be material to the subject-matter of any trial under this Act, it may issue a warrant authorizing any police officer or any member of the armed forces or of any of the security agencies to-

- a) enter, if necessary by force, the building or other place and every part thereof; and
- b) search for, seize and remove any money, other property, book, record accounts, statement or information found therein.

3. Power to control property of debtor or accused

- 1) Where at any stage of a hearing or trial, the Court is satisfied that a prima facie case has been made out against a person, the Court may by order and for such time as it may direct or require-
 - a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order;
 - b) addressed to the manager of the bank or to the head office of the bank where the person has an account or is believed to have an account, direct the manager or the bank to-
 - (i) stop all outward payments, operations or transactions (including any bill of exchange) for the time specified in the order;
 - (ii) supply any information and produce books and documents, in respect of the account of that person; and
 - c) where necessary or expedient, vest in the Court or otherwise acquire the custody of any property, movable or immovable, of the person for the preservation of the property pending the determination of the proceedings.
- 2) order under subsection (1) of this section shall have effect as specified therein, but any such order may at any time thereafter be varied or annulled by the Court.

- 3) Failure to comply with the requirement of an order under this section shall be an offence punishable on conviction-
 - a) in the case of an individual, by imprisonment for a term of not less than two years or more than five years without the option of a fine;
 - b) in the case of any group of persons not being a body corporate, by the like punishment of each of such persons as is prescribed in paragraph (a) of this subsection;
 - c) in the case of a body corporate by a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or ₦100,000 whichever is higher.

4. *Jurisdiction unaffected by separation from service*

The jurisdiction or authority of the Court shall not be affected by the fact that a person charged or brought before the Court for trial or hearing-

- a) has resigned or retired from the bank; or
- b) has had his appointment terminated in the bank; or
- c) has otherwise left the employment of the bank; or
- d) withdrew his participation from a merger, take-over or the closing of a bank, if the loan, advance, guarantee or any other credit facility, which is the subject matter of the proceeding before the Court is outstanding on the commencement of the merger, take-over or closing of the bank.

PART II
Recovery of debts owed to failed banks

5. *Recovery of debt owed to failed banks*

Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Court shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a failed bank, which remains outstanding as at the date of closure of the business of the failed bank.

6. *Proof of debt*

In addition to any other primary source of evidence-

- a) the examination reports and recommendations of the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation or their joint examination reports and recommendations; or
- b) any report of the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation; or
- c) the report of a person appointed by the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation, on the financial condition of a failed bank shall be sufficient proof that a loan or advance is owed to a failed bank and is due for recovery under this Act.

7. Application for recovery of debt

- 1) An application for the recovery of a debt owed to a failed bank shall be brought before the Court by the Receiver or Liquidator of the failed bank and where there is no Receiver or Liquidator, by a person appointed by the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation. [Form A.]
- 2) The application referred to in subsection (1) of this section shall contain the following, that is-
 - a) the name and address of the borrower;
 - b) if the borrower is a body corporate, a partnership or a sole trade-
 - (i) the address of its principal place of business;
 - (ii) the names and addresses of its shareholders, directors, proprietors or partners, as the case may be;
 - c) the amount of loan and advance outstanding;
 - d) details of securities pledged, if any; and
 - e) such other information as may be useful to the Court.
- 3) An application may be brought against a debtor under this section and the Court shall proceed to hear the application in accordance with the provisions of this Act, notwithstanding that a criminal proceeding is pending against the debtor in respect of the same matter.

8. Debtor to appear before Court to show cause

- 1) The Court shall on the return date and on receipt of a reply to the notice of an application made under section 11(1) of this Act, if the debtor admits the debt, enter judgment and ask the debtor to appear before it to show cause why the Court should not invoke its powers under this Act to recover the outstanding debt.
- 2) The Court shall, if satisfied with the explanation of the debtor, give the debtor not later than 30 days to pay to the Receiver or Liquidator the outstanding loan and interest thereon.
- 3) If a debtor pays the outstanding loan and interest within the period specified under subsection (2) of this section, the Court shall-
 - a) issue to the debtor a certificate of clearance; and
 - b) order that all the documents and properties pledged as security for the loan be released to the debtor.

9. Hearing and judgment

- 1) If the debtor-
 - a) at the expiration of the period specified under section 7 (1) of this Act, fails to repay all the outstanding loan and interest; or

- b) disputes the loan or interest, the Court shall proceed to hear the case and enter judgment and make such order as it deems appropriate for the purposes of this part of this Act.
- 2) Where the Court makes an order for the payment of the loan and interest and the debtor fails to comply within the time specified in the order, the Court shall make an order to levy execution on all the properties of the debtor pledged as security for the loan.

10. Withdrawal of application

A Receiver or Liquidator may, with leave of the Court at any time before judgment is entered, withdraw an application made under section 11(1) of this Act.

11. Sale of property

- 1) A property against which an order is made under section 8 (2) of this Act shall, with the concurrence of the Receiver or Liquidator, be sold by auction or by private contract and the money obtained from the sale shall be applied in accordance with the provisions of this section.
- 2) Where a property is sold under subsection (1) of this section, the Court shall execute an instrument to transfer, convey or assign the property to the purchaser or in any other way vest the property in the purchaser.
- 3) An instrument executed under subsection (2) of this section shall be conclusive proof of title of the purchaser and shall, where necessary, be a registrable instrument under the various registration laws, without the consent required under sections 21, 22 and 26 of the Land Use Act.
- 4) Any money obtained from the sale of properties under subsection (1) of this section shall, within two weeks from the date of sale, be paid to the Receiver or Liquidator of the failed bank after all the recovery expenses have been deducted.
- 5) If the money obtained from the sale under subsection (1) of this section is not sufficient to offset the outstanding loan and interest thereon, the Court may, where the debtor-
 - a) is an individual, levy execution on the other properties of the debtor;
 - b) is a body corporate, partnership or other association of individuals, notwithstanding anything to the contrary in the Companies and Allied Matters Act or any other law for the time being in force, levy execution on the other properties of the body corporate, partnership or association of individuals.
- 6) Where the Court levies execution under subsection (5) of this section, the properties shall be sold as specified in subsection (1) of this section and the provisions of subsections (2), (3) and (4) of this section s

- 7) shall apply to the sale and money obtained from the sale. If the money obtained from the sale of properties under subsection (6) of this section is still not sufficient to offset the outstanding loan and interest thereon, the Court may, subject to section 290 of the Companies and Allied Matters Act, levy execution on the personal properties of the directors of the body corporate, partners of the partnership or individuals of the association, as the case may be, which shall be sold and applied in satisfaction of the outstanding debts, in accordance with the provisions of this section.

12. Inadequate securities, etc.

- 1) Where-
- a) the information and details on the security pledged for the loan and filed before the Court is impossible to locate; or
 - b) no security is pledged at all; or
 - c) the identity of the debtor is difficult to locate; or
 - d) the debtor is found to be non-existent, fake or fictitious or in any way unidentifiable, the Court shall hold liable, for the outstanding loan and interest thereon, the directors, shareholders, partners, managers, officers and other employees of the failed bank who in the performance of their duties were found to have been connected in any way with the granting of the loan which has become irrecoverable.
- 2) The Court shall proceed to recover from the person referred to in subsection (1) of this section, jointly and severally the outstanding loan and interest thereon in accordance with the provisions of this Act, unless the Court is satisfied that the debt was incurred with the consent of the director, partner, shareholder, manager, officer or employee and that he exercised all such diligence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.

13. Exclusion of statutes of limitation. The provisions of the Limitation Law of a State or Limitation Act of the Federal Capital Territory, Abuja shall not apply to matters brought before the Court under this Part of this Act.

14. Rules of procedure, etc. The rules of procedure to be adopted in civil matters before the Court under this Act shall be as set out in the Schedule to this Act.

PART III

Offences and penalties

15. Offences

- 1) Any director, manager, officer or employee of a bank who-
- a) knowingly, recklessly, negligently, wilfully or otherwise grants, approves the grant, or is otherwise connected with the grant or approval of a loan, an

advance, a guarantee or any other credit facility or financial accommodation to any person-

- (i) without adequate security or collateral, contrary to the accepted practice or the bank's regulations; or
 - (ii) with no security or collateral where such security or collateral is normally required in accordance with the bank's regulations; or
 - (iii) with a defective security or collateral; or
 - (iv) without perfecting, through his negligence or otherwise, a security or collateral obtained; or
- b) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility which is above his limit as laid down by law or any regulatory authority or the bank's regulations; or
 - c) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility to any person in contravention of any law for the time being in force, any regulation, circular, or procedure as laid down, from time to time, by the regulatory authorities or by the bank; or
 - d) receives or participates in sharing, for personal gratification, any money, profit, property or pecuniary benefit towards or after the procurement of a loan, an advance, a guarantee or any other credit facility from any person whether or not that person is a customer of the bank; or
 - e) recklessly grants or approves a loan or an interest waiver where the borrower is known to have the ability to repay the loan and interest, is guilty of an offence under this Act.
- 2) A person who, being indebted to or being a customer of a bank, negligently, wilfully or recklessly-
 - a) makes a statement, whether written or oral, or gives any information; or
 - b) fills any form to a bank, knowing it to be false, fake, non-existent or fictitious, with intention of concealing his identity from the bank so as to avoid the repayment of a loan, an advance, a guarantee or any other credit facility granted him by the bank, is guilty of an offence under this Act.
 - 3) Where the person referred to in subsection (2) of this section is a body corporate, any of its directors, managers, officers, employees or partners who is responsible or is in any way connected with the doing of any of the acts referred to in that subsection is guilty of the same offence under this Act and liable on conviction to the same punishment.

- 4) A person who fails to comply with an order of the Court under section 9 (2) of this Act for the payment of the loan and interest within the time specified in an order under that section is guilty of an offence.

16. Penalties

- 1) A person who commits an offence under section 15 of this Act is liable on conviction, subject to subsection (4) of this section, in the case of an offence-
 - a) under subsection (1) (a), (b) or (c) of that section, to imprisonment for a term not exceeding five years without an option of a fine;
 - b) under subsection (1) (d) or (e) of that section, to imprisonment for a term not exceeding three years without an option of a fine;
 - c) under subsection (2) of that section, to imprisonment for a term not exceeding three years without an option of a fine;
 - d) under subsection (4) of that section, to imprisonment for a term not exceeding three years without an option of a fine.
- 2) The Court shall order the refund of the value equal to the amount involved in the offence or of such other value as the Court may deem fair and just in the circumstance or the confiscation of the property, movable or immovable of a person convicted of an offence under this Act.
- 3) A person convicted of an offence under this Act may voluntarily surrender property, movable or immovable, of the value equal to the amount involved in the offence or such other value as he may decide.
- 4) A property confiscated or surrendered under this section shall be forfeited-
 - a) to the bank that suffered the loss; or
 - b) in the case of a failed bank, to the Receiver or Liquidator for the benefit of that bank; or
 - c) to such other person who, in the opinion of the Court, deserves to be compensated for loss suffered.
- 5) Where, by reason of the confiscation or voluntary surrender of property, under this section, there is full or substantial recovery of the amount involved in the offence, the Court may, if it deems it equitable, reduce or decline to impose the penalty specified in subsection (1) of this section or in any other enactment.

17. Attempt to commit offence, etc.

- 1) A person who attempts to commit any of the offences specified in section 15 of this Act is guilty of an offence and liable on conviction to the same punishment as is prescribed for the full offence under section 16 of this Act.
- 2) Where a person is charged with any of the offences specified in this Act, but the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence although the attempt is

not separately charged and shall be liable to the same punishment as is prescribed for the offence under section 16 of this Act.

- 3) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the person shall not be acquitted but shall be convicted of the offence and be liable to the same punishment as is prescribed for the offence under section 16 of this Act.
- 4) Where, in respect of an act which is an offence under this Act, the Court is satisfied that a person, not being a person charged with an offence under this Act-
 - a) acted in concert or conspired with any person; or
 - b) knowingly took part to any extent whatsoever in the commission of an act constituting an offence specified in this Act, the Court shall have power to treat the person in like manner as a person charged with an offence under this Act and shall proceed against him accordingly notwithstanding anything to the contrary in any other enactment.

18. Offence by bodies corporate

- 1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the connivance of or to be attributable to any neglect on the part of a director, manager, registrar or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- 2) Where a body corporate, other than a bank, is convicted of an offence under this Act, the Court may order that the body corporate be wound up and the body corporate shall thereupon and without any further assurance but for that order, be wound up and all its assets, after satisfying all the claims of the Receiver or Liquidator, shall be forfeited to the Federal Government.

19. Evidence of accomplice, etc.

- 1) Notwithstanding anything to the contrary in any law (including any rule of law), no witness shall, in any trial under this Act, be presumed to be unworthy of credit by reason only that he took part in the commission of the offence.
- 2) Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged, and punished as provided under this Act.
- 3) Where a person is charged with an offence under this Act, but the evidence establishes the commission of another offence under this Act, the offender

shall not be entitled to acquittal but he may be convicted of that other offence and punished as provided under this Act.

- 4) Where a person aids, abets, counsels, procures or conspires with any other person to commit any of the offences under this Act, he is guilty of the offence and liable on conviction to the same punishment as prescribed for that offence under this Act. [1999 No. 62.]

20. Powers of arrest a person who commits an offence under this Act may be arrested without warrant by a police officer.

21. Bail

- 1) The Court shall have power to grant bail to an accused person charged with an offence under this Act or any other law triable by the Court upon such terms as the Court may deem fit including-
- a) the payment of a deposit of one quarter of the amount of money involved in the offence;
 - b) the provision of a surety or such number of sureties who shall deposit adequate security for the balance of the amount involved in the offence; and
 - c) the handing over of his passport to the court for the duration of the trial.
- 2) Notwithstanding the provisions of subsection (1) of this section, the police shall, before any person is charged before the court for an offence under this Act, have power to grant but to any person who is arrested or detained upon such terms and conditions as are reasonably necessary to ensure compliance with the provisions of subsection (1) (a)-(c) of this section.

PART IV

Miscellaneous

22. Inconsistency

Where a provision of this Act is inconsistent with that of the Evidence Act or any other enactment or law, the provisions of this Act shall prevail and that other provisions shall to the extent of its inconsistency, not be applicable.

23. Interpretation

In this Act, unless the context otherwise requires “application” means an application made by a receiver of Liquidator of a failed bank for the recovery of a debt owed to the failed bank;

“bank” has the meaning assigned to it under the Banks and other financial institutions Act and includes-

- a) a financial institution as defined under that Act or under the Nigerian Deposit Insurance Corporation Act; and
- b) a development bank; and
- c) a mortgage bank or any other bank established by law;

“Court” means the Federal High Court;

“debt” means any loan, advance, credit accommodation, guarantee or any other credit facility, together with the interest thereon, which remain outstanding and unpaid against a customer of a bank in favour of the bank;

“director” means a director as defined in the Companies and Allied Matters Act and within the meaning of section 20(5) of the Banks and Other Financial Institutions Act and includes a wife, husband, father, mother, son or daughter of a director;

“employee” means a person who is or has been employed, or connected in any capacity with the affairs of a bank or any person arraigned before the Court under this Act;

“failed bank” means a bank or other financial institution whose licence has been revoked or which has been declared closed, placed under receivership or otherwise taken over by the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation or whose capital to risk weighted assets ratio is below such minimum percentage as may be prescribed from time to time by the Central Bank of Nigeria or such other appropriate regulation or authority and includes a bank which may otherwise be described as failed by the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation or such other appropriate regulatory authority;

“Liquidator or Receiver” includes a person appointed by the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation under section 7 (1) of this Act;

“loan” includes an advance, a guarantee and any other credit facility;

“unsecured” means without security or collateral.

24. Short title

This Act may be cited as the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act.

SCHEDULE

[Section 14...]

Procedure for the recovery of debts at the Federal High Court

Interpretation

In this Schedule, unless the context otherwise requires-

“Civil Procedure Rules” means the Federal High Court (Civil Procedure) Rules, or rules of Court amending or replacing those Rules;

“Court notice board” means a notice board at the Registry and, where notice of hearing is being or has been given, a notice board at the place of the hearing;

“registry” means the registry of the Court.

1. Presentation of application

- 1) Application for the recovery of debts owed to a failed bank shall be made by the Receiver or Liquidator in Form A as set out in the Appendix to this Schedule leaving it in person, or by the hand of the solicitor (if any) named at the foot of the application, with the registrar, and the registrar shall (if so required) give a receipt which may be in Form B in the Appendix to this Schedule.
- 2) There shall also be left with the registrar a copy of the application for each respondent and seven other copies thereof.
- 3) The registrar shall compare each copy of the application left in accordance with sub-paragraph (2) of this paragraph with the original application and shall, upon being satisfied by such comparison that it is a true copy thereof, certify it to be so.
- 4) The Receiver or Liquidator shall, at the time of presenting the application, pay the fees for its service and publication, and for certifying the copies; and in default of such a payment, the application shall not be received unless the Court otherwise orders.

2. Contents of application

- 1) The application shall contain the particulars set out therein as specified in section 11 (2) of this Act.
- 2) There shall be stated at the foot of the application an address for service within five kilometres of a post office in the Judicial Division, and the name of its occupier, at which address documents intended for the Receiver or Liquidator may be left.
 - 3) If an address for service and its occupier are not stated, the application shall not be filed, unless the Court otherwise orders.
- 4) There shall be added at the foot of the application a note signed by the Receiver or Liquidator giving the name of his solicitor, if any, or stating that he acts for himself, as the case may be.
- 5) Evidence need not be stated in the application, but the Court may order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual hearing in the same way as in a civil action in the Court, and upon such terms as to costs and otherwise as may be ordered.

3. Address for service

For the purpose of service of the application on the respondent, the Receiver or Liquidator shall furnish the registrar with the address of the respondent's abode or the address of a place where personal service can be effected on the respondent.

4. Action by registrar

- 1) On the presentation of an application and payment of the requisite fees, the registrar shall forthwith-
 - a) cause notice in Form C in the Appendix to this Schedule, of the presentation of the application and a certified copy of the application, to be served on the debtor;
 - b) post up on the court notice board a certified copy of the application;
 - c) send a certified copy of the application by registered post or messenger to the person or authority to whom it is required by law that the determination of the application shall be certified
- 2) In the notice of presentation of the application, the Court shall state a time, not being less than five days or more than fifteen days after the date of service of the notice, within which the debtor is to enter an appearance.
- 3) In fixing such time, the court shall have regard to the necessity for securing a speedy hearing of the application, and to the distance from the registrar of the address furnished under paragraph 2 of this Schedule.

5. Service

- 1) Subject to the sub-paragraphs (2) and (3) of this paragraph, service on the respondent of the documents mentioned in sub-paragraph (1) (a) of paragraph 5 of this Schedule and of any other documents required to be served on him before entering an appearance
- 2) Where the Receiver or Liquidator has furnish under paragraph 4 of this Schedule, the address of a place where personal service can be effected on the respondent, and the respondent cannot be found at that place, the Court, on being satisfied, upon an application supported by an affidavit showing what has been done, that all reasonable efforts have been made to effect personal service, may order that service of any document mentioned in sub-paragraph (1) of this paragraph be effected in any of the ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in a civil case, and such service shall be deemed to be equivalent to personal service,
- 3) The proceedings under the application shall not be vitiated by the fact that the respondent may not have been served personally or that any document of which substituted service has been effected pursuant to an order made under sub-paragraph (2) of this paragraph did not reach the respondent's hands; and in such circumstances as aforesaid the proceedings may be heard and continued as if the respondent had been served personally with the document, and shall be valid and effective for all purposes.

6. Entry of appearance

- 1) The debtor shall-

- a) within such time after being served or deemed to be served with the notice of the application as may be stated in the notice; or
- b) where an order has been made under sub-paragraph (2) of paragraph 6 of this Schedule, within such other time (if any) as may be stated in that order, enter an appearance by filing in the registry a memorandum of appearance in Form D in the Appendix to this Schedule stating that he admits the debt or that he intends to oppose the application and giving the name and address of his solicitor, if any, or stating that he acts for himself, as the case may be, and in either case giving an address for service within five kilometres of a post office in the Judicial Division and name of its occupier, at which documents intended for the debtor may be left.
- 2) If an address for service and its occupier are not stated, the memorandum shall not be filed, unless the Court otherwise orders.
- 3) The memorandum of appearance shall be signed by the debtor but may be filed by his solicitor, if any.
- 4) At the time of filing the memorandum of appearance the debtor or his solicitor shall leave a duplicate thereof for each other party to the application and three other duplicates thereof and pay the fees for service, and in default of such duplicate being left and such fees being paid at that time, the memorandum shall not be filed, unless the Court otherwise orders.

7. Default of appearance

If the debtor does not enter an appearance as aforesaid, any document intended for the debtor may be posted on the court notice board and such posting shall be sufficient notice thereof.

8. Notice of appearance

The registrar shall cause a duplicate of the memorandum of appearance to be served upon, or notice thereof to be given to, the other parties to the application.

9. Filing of reply

- 1) The debtor shall, within six days of entering an appearance, file in the registry his reply specifying therein which of the facts and grounds alleged in the application he admits or denies and setting out any facts and grounds on which he relies in opposition.
- 2) The reply may be signed and filed by the debtor's solicitor, if any.
- 3) At the time of filing the reply, the debtor or his solicitor shall leave a duplicate thereof for each party to the complaint and three other duplicates thereof and pay the fees for service; and in default of such duplicates being left and such fees being paid at that time, the reply shall not be filed, unless the Court otherwise orders.

- 4) The registrar shall cause a duplicate of the reply to be served on each other party to the complaint.

10. Admission of debt

Where the debtor admits the debt, the Court shall, on receipt of his reply, summon him to appear before the Court as specified in section 12 of this Act.

11. Amendment of application

The relevant provisions of the Civil Procedure Rules relating to amendment of pleading shall apply to the amendment of an application as if for the words “any proceeding” in those provisions there were substituted the words “the application or the reply, if any”.

12. Further particulars or direction

- 1) If any party to the application wishes to have further particulars or other directions of the Court, he may, at any time after the entry of appearance, but not later than seven days after the filing of the reply, apply to the Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Court otherwise orders, be set down for hearing on the first available day.
- 2) The party so applying shall give notice of his motion to the other parties, and where he relies on any facts which are not apparent on the face of the documents already filed, he shall support his motion by affidavit.
- 3) If a party does not so apply, he shall be taken to require no further particulars or other directions and such party shall be debarred from so applying after the lapse of the period laid down in sub-paragraph (1) of this paragraph except with the leave of the Court, which may be given in a proper case on such terms as to costs and otherwise as the Court may be deemed fit.

13. Open Court

Every application shall be heard in open Court.

14. Time and place of hearing

- 1) Subject to the provisions of sub-paragraph (2) of this paragraph, the time and place of the hearing of an application shall be fixed by the Court and notice of the time and place of the hearing (which may be in Form E in the Appendix to this Schedule) shall be given by the registrar at least three days before the day fixed for the hearing-
 - 2) by posting or causing to be posted, the notice on the court notice board;
 - 3) by sending a copy of the notice by registered post or messenger to the Receiver's or Liquidator's address for service;
 - 4) by sending likewise a similar copy to the debtor's address for service, if any.
- (3) The Court shall sit in such place or places as the judge may, from time to time, determine.

15. Publication, good notice

The posting of the notice of hearing on the court notice board shall be deemed and taken to be good notice and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies of the notice sent pursuant to paragraph 15 of this Schedule.

16. Continuance day to day

No formal adjournment of the Court for the hearing of an application shall be necessary, but the hearing is to be deemed adjourned and may be continued from day to day until the case is concluded; and in the event of the judge of the Court who begins the hearing being disabled by illness or otherwise, it may be recommenced and concluded by another judge to be appointed by the Chief Judge of the Federal High Court.

17. Adjournment

After the hearing has begun, if the case cannot be continued on the ensuing day or, if that day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned sine die, but to a definite day to be announced before the rising of the Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the registrar on the court notice board.

18. Powers of Federal High Court over proceedings

All interlocutory questions and matters shall be heard and disposed of before the Court which shall have control over the proceedings as a judge in the ordinary proceedings of the Court.

19. Judgement

At the conclusion of the hearing, the Court shall deliver its judgement and make such order as it deems appropriate for the purposes of Part II of this Act.

20. Appeal

A judgment of the Court is subject to appeal as specified in section 5 of this Act.

21. Enlargement and abridgement of time

- 1) The Court shall have power to enlarge or abridge the time appointed by this Act or the Rules of Court mentioned in paragraph 27 of this Schedule or fixed by any order enlarging time, for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require.
- 2) Enlargement may be ordered although the application for the enlargement is not made until after the expiration of the time appointed or allowed.
- 3) When the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of the paragraphs or rules referred to in paragraph 1 of this rule, or by direction

or order or the Court, the costs of any application to extend such time and of any order made thereon, shall be borne by the party making the application, unless the Court shall otherwise order.

- 4) An application for enlargement or abridgement of time shall be supported by affidavit.
- 5) An application for abridgement of time may be made *ex parte*, but the Court may require notice thereof to be given to the other party.
- 6) An application for enlargement of time shall be made by motion after notice to the other party but the Court may, for good cause shown by affidavit or otherwise, dispose with such notice.
- 7) A copy of an order made for enlargement or abridgement of time shall be filed or delivered together with any document filed or delivered by virtue of the order.

22. Service of notice

- 1) Where any summons, notice or document, other than a notice or document mentioned in paragraph 5 (1) of this Schedule, is required to be served on any person for a purpose connected with an application, the same may be served either by delivering it to such person or by leaving it at his last known place of abode with any person there found who is a resident thereof and appears to be eighteen years of age or more.
- 2) After a party has given an address for service, it shall be sufficient if, in lieu of serving him personally with any document intended for him, such document is served-
 - a) on the person appearing on the paper last filed on his behalf as his solicitor, wherever such person may be found or, if such person is not found at his office, on the clerk there apparently in charge; or
 - b) on the person named as occupier in his address for service, wherever such person may be found or, if such person is not found at such address on-
 - (i) the person there found apparently in charge, if such address is a place of business; or
 - (ii) any person other than a domestic servant there found who is a resident thereof and appears to be eighteen years of age or more.
- 3) A party may change his address for service by giving notice of his new address for service and its occupier to the registrar and to each other party; but until such notice is received by the registrar, his old address for service shall continue to be his address for service.
- 4) Where service in one of the foregoing modes has proved impracticable, the Court, on being satisfied, upon an application supported by an affidavit showing what has been done, that all reasonable effort has been made to effect

service, may order that service be effected in any of the ways mentioned in the provisions of the Civil Procedure Rules relating to substituted service shall be sufficient, or may dispense with service or notice, as the Court may think fit.

23. Duplicate of documents

In the absence of express provision for the furnishing of copies of duplicates of documents filed or used in connection with any step taken in the proceedings, the party taking such steps shall, unless the registrar otherwise directs, leave with the registrar a duplicate of every such document for each other party and three other duplicates.

24. Non-compliance with rules, etc.

- 1) Non-compliance with any of the provisions of this Schedule, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court shall so direct, but such proceeding may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think fit to ensure substantial justice.
- 2) No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.
- 3) Where an application is made to set aside proceedings for irregularity the several objectives intended to be insisted upon shall be stated in the notice of motion.
- 4) No objection shall be made that a certified copy has been used instead of a duplicate or a duplicate instead of a certified copy.
- 5) An application shall not be defeated by any objection merely as to form.

25. Forms

- 1) The forms contained in the Appendix to these Rules may, in accordance with any instructions contained in the said forms, and with such variation as the circumstances of the particular case may require, be used for the matter to which they apply, and when so used, shall be good and sufficient in law.
- 2) Where no form has been prescribed in this Schedule for a particular matter, the forms as contained in the Civil Procedure Rules of the Court may, with such modifications as the circumstances may require, be used for the matter.

26. Application of Rules of Court

Where these Rules contain no provision in respect of any matter relating to or connected with the hearing of a case under this Act, the provisions of the Civil Procedure Rules of the Court shall, with such modifications as may be necessary to render them conveniently applicable, apply as if the applicant and

the respondent were respectively the plaintiff and the defendant in a civil action.

APPENDIX

[Paragraph 26.]

FORM A

[Section 7 and paragraphs 2 and 26.] IN THE FEDERAL HIGH COURT

Application for the recovery of debt

Between

A.B. Applicant

(Receiver/Liquidator of.)

C.D.

(Receiver/Liquidator of.)

and

E.F. Respondent(s) (Debtor)

G.H.

(Debtor)

The application of A.B. of.

(or of A.B. of) and C.D. of

..... (as the case may be) whose names are subscribed.

State here contents of your application as set out in section 7 (1) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act-

a) the name and address of the borrower;

b) if the borrower is a body corporate, a partnership or sole trader-

(i) the address of its principal place of business;

(ii) the names and addresses of its shareholders, directors, proprietors or partners as the case maybe;

c) the amount of loan and advance outstanding;

d) details of securities pledged, if any; and

e) such other information as may be useful to the Court.

Address for service

Occupier

The name of my (or our) solicitor is or I (or we) am (or are) acting for myself (or ourselves.)

Signed A.B.

..... C.D.

SIGNED before me this day of 20

Register MB

[Paragraph and 26.]

IN THE FEDERAL HIGH COURT

Receipt of application for the recovery of debt

Received on theday of20at the registry of
the Federal High Court an application for the recovery of debt owed
to.....

DATED this.....day of20.....

.....

Registrar .

FORM C

[Paragraph 5 and 26.]

IN THE FEDERAL HIGH COURT

Notice of presentation of application for the recovery of debts

Between

A.B.....Applicant

(Receiver/Liquidator of.....)

C.D.....

(Receiver/Liquidator of.....)

And

E.F.....Respondent(s) (Debtor)

G.H.....(Debtor)

The application of AB. Of.....

(or of AB. Of).....and

CD. of.....(as the case may be) whose names are
subscribed.

Take Notice that an application, a duplicate whereof is attached hereto, has
this day been presented in the registry of the Court named above and that you are
to enter an appearance to the application in the said registry within days of the
date when this notice was presented thereof, or within..... days of the
date when this notice was left at your address set out below, or as the Court may
direct by order under paragraph 6 of Schedule I to the Failed Bank (Recovery of
Debts) and Financial Malpractices in Banks Act, otherwise proceedings upon the
application may be continued and determined

in default of your appearance, and any document relating to such
proceedings and intended for you may be posted up on the court notice board,
which shall be sufficient notice thereof.

DATED this.....day of20

.....
 Registrar
 E.F. of
 G.H. of

FORM D

[Paragraphs 7 and 26.]

IN THE FEDERAL HIGH COURT

Memorandum of appearance

Between

A.B. Applicant

(Receiver/Liquidator of)

C.D.

(Receiver/Liquidator of.....)

and

E.F. Respondent(s) (Debtor)

G. H

(Debtor)

The application of AB. Of.....

(or of AB. of)and

CD. of(as the case may be) whose
 names are subscribed.

Please enter an appearance for.....

(Give full name of Respondent wishing to appear)

Address for service

The name of my (or our) solicitor is or I (or we) am (or are) I (or we) am
 (or are) acting for myself (or ourselves).

DATED theday of.....20.....

Signed

..... E.F

..... G.H.

FORM E

[Paragraphs 15 and 26.]

IN THE FEDERAL HIGH COURT

Notice of hearing

Between

A.B.....Applicant

(Receiver/Liquidator of.....)

C.D.....

(Receiver/Liquidator of.....)

and

E. F.....Respondent(s)

(Debtor)

G.H.....

(Debtor)

The application of A.B. of

(or of A.B. of).....and

C.D. of.....(as the case may be) whose names are
subscribed.TAKE NOTICE that the above application will be heard aton the
..... day of.....20and on such other subsequent days
as may be useful.

DATED this.....day of20 .

.....

Registrar

FORM F

[Paragraphs 12 and 26.]

IN THE FEDERAL HIGH COURT

Certificate of clearance

I certify that the debtor

of.....

having paid to the Receiver/Liquidator of....., the outstanding loan
of N.....plus interest thereon of N.....is
hereby cleared of the debt the subject matter of the application.

DATED this.....day of20

.....

Judge of the Federal High Court

FORM G

[Paragraphs 18 and 26.]

IN THE FEDERAL HIGH COURT

Order for the release of security

It is ordered that all documents and properties namely

.....

(list documents and properties here)

.....

.....

.....

pledged as security for the loan, the subject matter of the application, be released to the debtor. And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

DATED this.....day of.....20.....

Judge of the Federal High Court

FORM H

[Paragraphs 14 and 26.]

IN THE FEDERAL HIGH COURT

Notice of motion to withdraw application

Between

A.B.....Applicant

(Receiver/Liquidator of.....)

C.D.....

(Receiver/Liquidator of.....)

and

E.F.....Respondent(s)

(Debtor)

G.H.....

(Debtor)

The application of A.B. of.....

(or of A.B. of.....and C.D. of)

..... (as the case may be) whose names are subscribed. Write out the Notice of Motion in the manner usual in civil proceeding and conclude as follows-

The applicant proposes to apply to withdraw his application on the following grounds

.....

(Here state the grounds)

Signed

..... E.F.

or

.....

Solicitor

SIGNED before me this.....day of.....20.....

.....

Registrar

 FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL
 MALPRACTICES IN BANKS ACT
 SUBSIDIARY LEGISLATION

 No Subsidiary Legislation

Chapter 19

Bill of Exchange Act, CAP B8 LFN, 2004

ARRANGEMENT OF SECTIONS

Part I: Preliminary

General

1. Short title
2. Interpretation

Part II

Bill of Exchange

Form of Interpretation

3. Bill of exchange defined
4. Inland and foreign bills
5. Effect where different parties to a bill are the same person
6. Address to drawee
7. Certainty required as to payee
8. What bill are negotiable
9. Sum payable
10. Bill payable on demand
11. Bill payable at a future time
12. Omission of date in bill payable after date
13. Ante-dating and post-dating
14. Computation of time of payment
15. Case of need
16. Optional stipulation by drawer or endorser
17. Definition and requisites of acceptance
18. Time for acceptance
19. General and qualified acceptance
20. Inchoate instruments
21. Delivery

Capacity and Authority of Parties

22. Capacity of parties
23. Signature essential to liability
24. Forged or unauthorized signature
25. Procuration signatures

26. Person signing as agent or in representative capacity

The Consideration for a Bill

27. Value and holder for value

28. Accommodation bill or party

29. Holder in due course

30. Presumption of value and good faith

31. Negotiation of bill.

Negotiation of Bills

32. Requisites of a valid endorsement

33. Conditional endorsement

34. Endorsement in blank and special endorsement

35. Restrictive endorsement

36. Negotiation of overdue or dishonoured bill

37. Negotiation of bill to party already liable thereon

38. Right of the holder

General Duties of the Holder

39. When presentment for acceptance is necessary

40. Time for presenting bill payable after sight

41. Rules as to presentment for acceptance and excuses for non-presentment

42. Non-acceptance

43. Dishonour by non-acceptance and its consequences

44. Duties as to qualified acceptances

45. Rules as to presentment for payment

46. Excuses for delay or non-presentment for payment

47. Dishonour by non-payment

48. Notice of dishonour and effect of non-notice

49. Rules as to notice of dishonour

50. Excuses for non-notice and delay

51. Noting of protest of bill

52. Duties of holder as regards acceptor

Liabilities of Parties

53. Bill not assignment of funds in hands of drawee

54. Liabilities of acceptor

55. Liability of drawer or endorser

56. Stranger signing bill liable as endorser

57. Measure of damages against parties to dishonoured bill

58. Transferor by delivery and transferee

Discharge of Bill

59. Payment of due course

- 60. Banker paying demand draft whereon endorsement is forged
- 61. Acceptor the holder at maturity
- 62. Express waiver
- 63. Cancellation
- 64. Alteration of bill

Acceptance and Payment for Honour

- 65. Acceptance for honour *supra* protest
- 66. Liability of acceptor for honour
- 67. Presentment for acceptor for honour
- 68. Payment for honour *supra* protest

Lost Instruments

- 69. Holder's right to duplicate of lost bill
- 70. Action on lost bill

Bill in a Set

- 71. Rules as to sets

Conflict of Law

- 72. Rules where laws conflict

Part III

Cheques on a Banker

- 73. Cheque defined
- 74. Presentment of cheque for payment
- 75. Revocation of banker's authority
- 76. Payment by bankers of unendorsed cheques and other instruments
- 77. Protection of collecting banks.

Crossed Cheques

- 78. General and special crossings defined
- 79. Crossing by drawer or after issue
- 80. Crossing a material part of cheque
- 81. Duties of banker as to crossed cheques
- 82. Protection to banker and drawer where cheque is crossed
- 83. Effect of crossing on holder
- 84. Extension of enactments

Part IV

Promissory Notes

- 85. Promissory notes defined
- 86. Delivery necessary
- 87. Joint and several notes
- 88. Note payable on demand
- 89. Presentment of note for payment

- 90. Liability of maker
- 91. Application of Part II to notes

Part V

Supplementary

- 92. Good faith
- 93. Signature
- 94. Computation of time
- 95. When noting equivalent to protest
- 96. Protest when notary not accessible
- 97. Dividend warrants may be crossed
- 98. Savings

Schedule

Bills of Exchange Act

An Act to codify the law relating to bills of exchange, cheques and promissory notes.

9th day of August 1917

Part I

Preliminary

- 1. This Act may be cited as the Bills of Exchange Act.
- 2. (1) In this Act –
 - “acceptance” means an acceptance completed by delivery or notification;
 - “action” includes a counter-claim and set-off;
 - “banker” includes a body of persons whether incorporated or not who carry on the business of banking;
 - “bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy;
 - “bearer” means the person in possession of a bill or note which is payable to bearer;
 - “bill” means bill of exchange;
 - “delivery” means transfer of possession, actual or constructive from one person to another;
 - “endorsement” means an endorsement completed by delivery;
 - “holder” means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof;
 - “issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder;
 - “note” means promissory note;
 - “prescribed instrument” means any of the following instruments-
 - (a) A cheque;

- (b) A document issued by a customer of a bank which is not a bill but is intended to enable a person to obtain payment from the bank of the sum mentioned in the document;
 - (c) A draft drawn by a banker upon himself and payable on demand at an office of his bank;
- “value” means valuable consideration.

Part II

Bill of Exchange

Form and Interpretation

3. (1) a bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed on demand or at a fixed or determined future time a sum certain in money to or to the order of a specified person, or to bearer.
- (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with-
- 4..(1) An inland bill is a bill which is on the face of its purports to be-
 - (a) Both drawn and payable within Nigeria; or
 - (b) Drawn within Nigeria upon some person resident therein.
 - (c) Any other bill is a foreign bill.
- (2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.
5. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.
- (2) Where in a bill the drawer and the drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.
6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.
- (2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.
7. (1) Where a bill is not payable to bearer the payee must be named or otherwise indicated therein with reasonable certainty.

- (2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees; and may also be made payable to the holder of an office for the time being.
- (3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.
- 8. (1) When a bill contains word prohibiting transfer or indicating an intention that it should not be transferable it is valid as between the parties thereto but is not negotiable.
 - (2) A negotiable bill may be payable either to order or the bearer.
 - (3) a bill is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.
 - (4) A bill payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
 - (5) Where a bill either originally or by endorsement is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.
- 9. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid-
 - (a) With interest;
 - (b) By stated instalments;
 - (c) By stated instalments, with a provision, that upon default in payment of any instalment the whole shall become due;
 - (d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the Bill.
- (2) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the amount payable.
- (3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.
- 10.(1) A bill is payable on demand-
 - (a) Which is expressed to be payable on demand or at sight or on presentation; or
 - (b) In which no time for payment is expressed.
- (2) Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts or any endorser who so endorses it, be deemed a bill payable on demand.

- 11.(1) A bill is payable at a determined future time within the meaning of this Act which is expressed to be payable-
 - (a) At a fixed period after or sight;
 - (b) On or at a fixed period after the occurrence of a specified event is certain to happen, though the time of happening may be uncertain.
- (2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.
12. Where a bill expressed to be payable at a fixed period after date is issued undated or where the acceptance of a bill payable at a fixed period after sight is undated any holder may insert therein a true date of issue or acceptance and the bill shall be payable accordingly:

Provided that –

- (a) Where the holder in good faith and by mistake inserts a wrong date; and
 - (b) In every case where a wrong date is inserted if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby by shall operate and be payable as if the date so inserted had been the true date.
- 13.(1) Where a bill or an acceptance or any endorsement on a bill is dated the date shall unless the contrary be proved be deemed to be the true date of the drawing, acceptance or endorsement as the case may be.
 - (2) A bill is not invalid by reason only that it is ante-dated or post-dated or that it bears date on a Sunday.
 14. Where a bill is not payable on demand, the day on which it falls due is determined as follows –
 - (a) There days called days of grace are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill and the bill is due and payable on the last day of grace:

Provided that-

- (i) When the last day of grace falls on Sunday, Christmas Day or Good Friday, the bill is, except in the case hereinafter provided for, due and payable on the proceeding business day,
- (ii) When the last day of grace is a public holiday (other than Christmas Day or Good Friday), or when the last day of grace is a Sunday and the second day of grace is a public holiday, the bill is due and payable on the succeeding business day,
- (b) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;

- (c) Where a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted and from the date of noting or protest if the bill be noted or protesting for non-acceptance or for non-delivery;
- (d) The term “month” in a bill means calendar month.
- 15.(1) The drawer of a bill and any endorser may insert Case of therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment and such person is called the referee in case of need.
- (2) It is in the option of the holder to resort to the referee in case of need or not as he may think fit.
- 16. The drawer of a bill and any endorser may insert therein an express stipulation-
 - (a) Negating or limiting his own liability to the holder;
 - (b) Waiving as regards himself some or all of the holder’s duties.
- 17.(1) The acceptance of a bill is the significance by the drawee of his assent to the order of the drawer.
- (2) An acceptance is invalid unless it complies with the following conditions-
 - (a) It must be written on the bill and be signed by the drawee; and the mere signature of the drawee without additional words is sufficient;
 - (b) It must not be express that the drawee will perform his promise by any other means than the payment of money.
- 18.(1) A bill may be accepted-
 - (a) Before it has been signed by the drawer or while otherwise incomplete;
 - (b) When it is overdue or after it has been dishonoured by a previous refusal to accept or by non-payment.
- (2) When a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.
- 19.(1) An acceptance is either-
 - (a) General; or
 - (b) Qualified.
- (2) A general acceptance assents without qualification to the order of the drawer; and a qualified acceptance in express terms varies the effect of the bill as drawn.
- (3) In particular an acceptance is qualified which is
 - (a) Conditional that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

- (b) Partial that is to say an acceptance to pay only of the amount for which the bill is drawn.
 - (c) Local that is to say an acceptance to pay part only at a particular specified place; and an acceptance only at a particular specified place and an acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere;
 - (d) Qualified as to time;
 - (e) The acceptance of someone or more of the drawees, but not of all.
- 20.(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an endorser; and, in the manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.
- (2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; and reasonable time for this purpose is a question of fact:
21. (1) Every contract on a bill, whether it be the drawer's, the acceptors, or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:
- Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.
- (2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery-
- (a) In order to be effectual must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;
 - (b) May be shown to be been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.
 - (3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved.
- 22.(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract;

Provided that nothing in this sections shall enable a corporation to make itself liable as drawer, acceptor or endorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or endorsed by an infant, minor or corporation having capacity or power to incur liability on a bill, the drawing or endorsement entities the holder to receive payment of the bill, and to enforce it against any other party thereto.

23. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such:

(a) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(b) The signature of the name of a firm is equivalent to the signature by the person so signing of the name of all persons liable as partners in that firm.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided than nothing in this section shall affect the ratification of an authorized signature not amounting to a forgery.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

26.(1) Where a person signs a bill as drawer, endorser or acceptor and adds words to his signature, indicating that he sighs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hands it is written, the construction most favourable to the validity of the instrument shall be adopted.

27.(1) Valuable consideration for a bill may be constituted by-

(a) Any consideration sufficient to support a simple contract;

(b) An antecedent debt or liability and such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

- (2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.
- (3) Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.
- 28.(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefore, and for the purpose of lending his name to some other person.
- (2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.
- 29.(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions:
 - (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact; or
 - (b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
- (2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.
- (3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill prior to that holder.
- 30.(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.
- (2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.
- 31.(1) A bill is negotiated when it is transferred from negotiation one person to another in such a manner as to constitute the transferee the holder of the bill.
- (2) A bill payable to bearer is negotiated by delivery.

- (3) A bill payable to order is negotiated by the endorsement of the holder completed by delivery.
 - (4) Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferor.
 - (5) Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as the negative personal liability.
32. An endorsement in order to operate as a negotiation must comply with the following conditions:
- (a) It must be written on the bill itself and be signed by the endorser and the simple signature of the endorser on the bill, without any additional words, is sufficient;
 - (b) An endorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognized is deemed to be written on the bill itself.
 - (c) It must be an endorsement of the entire bill, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally does not operate as a negotiation of the bill;
 - (d) Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the other;
 - (e) Where, in a bill payable to order, the payee or endorsee is wrongly designated or his name is misspelt, he may endorse the bill as therein described, adding if he thinks fit, his proper signature;
 - (f) Where there are two or more endorsement on a bill, each endorsement is deemed to have been made in order in which it appears on the bill, until the contrary is proved;
 - (g) An endorsement may be made in black or special. It may also contain terms making it restrictive.
33. Where a bill purports to be endorsed conditionally the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.
- 34.(1) An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.
- (2) A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

- (3) The provisions of this Act relating to a payee apply with the necessary modifications to an endorsee under a special endorsement.
- (4) When a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing the endorser's signature a direction to pay the bill to or to the order of himself or some other person.
- 35. (1) An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be endorsed "pay D. only", or "Pay D. for the account of X", or "Pay D. or order for collection".
- (2) A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but give him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.
 - (3) Where an overdue bill is negotiated, it can be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.
- 36. (1) Where a bill is negotiable in its origin it continues negotiation of overdue to be negotiable until it has been-
 - (a) restrictively endorsed; or
 - (b) discharged by payment or otherwise.
- (2) Where an overdue bill is negotiable, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can require or give a better title than that which the person from whom he took it had.
- (3) A bill payable on demand is deemed to be overdue within the meaning and for the purpose of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.
- (4) Except where an endorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.
- (5) where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attacking thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.
- 37. Where a bill is negotiated back to the drawer, or to a negotiation of bill to prior endorser or to the acceptor, such party may, subject to party the

provisions of the Act, re-issue and further negotiate the already liable bill, but he is not entitled to enforce payment of the bill against any intervening party whom he was previously liable.

38. The rights and powers of the holder of a bill are as follows-

- (a) He may sue on the bill in his own name;
- (b) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) Where his title is defective-
 - (i) If he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and
 - (ii) If he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

39.(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day it fall due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers.

40.(1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41.(1) A bill is duly presented for acceptance which is presented in accordance with the following rules:

- (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;

- (b) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one had authority to accept for all, then presentment may be made to him only;
 - (c) Where the drawee is dead, presentment may be made to his personal representative;
 - (d) Where the drawee is bankrupt or insolvent, presentment may be made to him or to his trustee or the official assignee;
 - (e) Where authorized by agreement or usage, a presentment through the post office is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance-
- (a) Where the drawee is dead, bankrupt or insolvent, or is a fictitious person or a person not having capacity to contract by bill;
 - (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected;
 - (c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (4) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.
42. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presented it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and endorsers.
43. (1) A bill is dishonoured by non-acceptance-
- (a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or where an advice is sent through the post office in pursuance of subsection (1) (a) of section 41 of this Act, and acceptance is not obtained within ten days from the time the advice is posted,
 - (b) When presentment for acceptance is excused and the bill is not accepted.
- (2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary.
44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.
- (2) Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or

does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill.

The provision of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

45.(1) subject to the provisions of the Act, a bill must be duly presented for payment; and if be not so presented the drawer and endorsers shall be discharged.

(2) A bill is duly presented for payment if it is presented in accordance with the following rules-

(a) Where the bill is not payable on demand, presentment must subject to the provisions of subsection (3) of this section, be made on the it falls due;

(b) where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable; and in determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case;

No person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(c) Where a bill is drawn upon, or by two or more persons who are not partners, and no place of payments specified, presentment must be made to them all;

(d) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found;

(e) Where authorized by agreement or usage, a presentation through the post office is sufficient.

(3) Notwithstanding anything contained in subsection (2) of this section, a bill may, subject to the provisions of this subsection, be presented for payment by means of an advice addressed to the person persons to whom presentment must under that subsection be made, at the proper place as defined in that subsection, and sent through the post office, stating that the bill is held for payment by the sender and giving the name of the drawer and particulars of the place at which it is so held, the amount for which and the date on which it was drawn and any issuance applicable to the bill.

- (4) Where presentment is made in pursuance of this subsection, the bill shall be deemed to be duly presented for the payment at the time the advice is posted; but a bill shall not be deemed to be duly presented for payment by virtue of an advice sent in pursuance of this subsection unless the advice is posted--
 - (a) in the case of a bill not payable on demand, not more than ten days and not less than five days before the bill falls due; or
 - (b) in the case of a bill payable on demand, within such reasonable time as is mentioned in paragraph (b) of subsection (2) of this section.
- 46.(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence; and when the cause of delay ceases to operate, presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with --
 - (a) where after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected; and the fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;
 - (b) where the drawee is a fictitious person;
 - (c) the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
 - (d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented;
 - (e) by waiver of presentment, express or implied.
- 47.(1) A bill is dishonoured by non-payment--
 - (a) when it is duly presented for payment and payment is refused or cannot be obtained or, where an advice is sent through a post office in pursuance of subsection (3) of section 45 of this Act, payment is not obtained--
 - (i) in the case of a bill not payable on demand on or before the date the bill falls due; or
 - (ii) in the case of a bill payable on demand, within ten days from the time the advice is posted.
 - (b) when presentment is excused and the bill is overdue and unpaid.
- (2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, and immediate right of recourse against the drawer and the endorsers accrues to the holder.
- 48. Subject to the provision of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the

drawer and each endorser, and any drawer or endorser to whom such notice is not given is discharged;

Provided that-

- (a) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the right of a holder in due course subsequent to the omission shall not be prejudiced by the omission;
 - (b) Where a bill is dishonoured by acceptance, and due notice of dishonour is given, it shall not be necessary to give notice if the subsequent dishonour by non-payment unless the bill shall in the main time have been accepted.
49. Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules, that is-
- (a) the notice must be given by or on behalf of the holder, or by or on behalf of an endorser, who, at the time of giving it, is himself liable on the bill;
 - (b) notice of dishonour may be given by an agent either in his own name or the name of any party entitled to give notice whether that party be his principal or not
 - (c) when the notice is given by or on behalf the holder, it ensures for the benefit of all prior endorsers who have a right of recourse against the party to whom it is given;
 - (d) where notice is given by or on behalf of an endorser, entitled to give notice as herein before provided, it ensures for the benefit of the holder and all endorsers subsequent to the party to whom notice is given
 - (e) the notice may be given in writing or by personal communication and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment
 - (f) the return of a dishonoured bill to the drawer or an endorser is, in point of form, deemed a sufficient notice of dishonour;
 - (g) a written need not to be signed and an insufficient written notice may be supplemented and validated by verbal communication;- and a misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby;-
 - (h) where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf;
 - (i) where the drawer or endorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found;-
 - (j) where the drawer or endorser is bankrupt or insolvent, notice may be given either to the party himself or to the trustee or official assignee;

- (k) where there are two or more drawers or endorser who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others;
 - (l) the notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter; and in the absence of special circumstances, notice shall not be deemed to have been given within a reasonable time unless-
 - (i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the later on the day after the dishonour of the bill,
 - (ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day when by the next post thereafter;
 - (j) where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal; and if he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice as himself the same time for giving notice as if the agent has been an independent holder;
 - (k) where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour;
 - (l) where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.
- 50.(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.
- (2) Notice of dishonour is dispensed with-
- (a) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged;
 - (b) by waiver express or implied; and notice of dishonour may be waived before the time of giving notice have arrived, or after the omission to give due notice;
 - (c) as regards the drawer in the following cases-
 - (i) where drawer and drawee are the same person,

- (ii) where the drawee is fictitious person or a person not having capacity to contract,
 - (iii) where the drawer is the person to whom the bill is presented for payment,
 - (iv) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill,
 - (v) where the drawer has countermanded payment;
 - (d) as regards the endorser in the following cases-
 - (i) where the drawee is fictitious person or a person not having capacity to contract and endorser was aware of the fact at the time the endorsed the bill,
 - (ii) where he endorser is the person to whom the bill is presented to for payment,
 - (iii) where the bill was accepted or made for his accommodation.
- 51.(1) Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or the endorser.
- (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested a drawer or endorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.
 - (3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
 - (4) Subject to the provision of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour or on the next succeeding business day thereafter. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.
 - (5) Where the acceptor of a bill becomes bankrupt or insolvent or suspense payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.
 - (6) A bill must be protested at the place where it is dishonoured:
- Provided that-
- (a) When a bill is presented through the post office, and returned by post dishonoured it may be protested at the place to which it is returned and on the day of it returned if received during business hours, and if not received during business hours, then not later than the next business day;
 - (b) When a bill drawn payable at the place of business or residence of some persons other than the drawee, has been dishonoured by non-acceptance, it

must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

- (7) a protest must contain a copy of the bill, and must be signed by the notary making it, and must specify-
 - (a) the person at whose request the bill is protested-
 - (b) the place in the date of protest, the course or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.
 - (8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.
 - (9) protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, his conduct, or negligence; when the cause of the delay cease to operate, the bill must be noted or protested with reasonable negligence.
52. (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.
- (2) When by the terms of qualified acceptance presentment for payment is required, the acceptor, in the presence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.
 - (3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.
 - (4) Where the holder of the bill present it for payment, he shall exhibit the bill to the person from whom he demands payments, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.
53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payments thereof, and the drawee of the bill who does not accept as required by this Act is not liable on the instrument.
54. The acceptor of a bill by accepting it-
- (a) engages that he will pay it according to the tenure of his acceptance;
 - (b) is precluded from denying to a holder in due course-
 - (i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill,
 - (ii) in the case of a bill payable to drawers order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement,

(iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement.

55.(1) The drawer of a bill by drawing it-

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or an endorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

(2) The endorser of a bill by endorsing it-

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) is precluded from denying to a holder in due course the genuineness and regularity, in all respects of the drawer's signature and all previous endorsements;

(c) is precluded from denying to his immediate or a subsequent endorsee that the bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an endorser to a holder in due course.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows-

(a) the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill, may recover from the acceptor or from the drawer, or from a prior endorser—

(i) the amount of the bill,

(ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case,

(iii) the expenses of nothing, or when protest is necessary, and the protest has been extended, the expense of protest;

(b) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with the interest thereon until the time of payment;

- (c) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may not be given at the same rate as interest proper.
- 58.(1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a transferor by delivery.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for the value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.
- 59.(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
- (2) "Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.
- (3) Subject to the provisions hereinafter contained, when a bill is paid by the drawee or an endorser it is not discharged; but-
 - (a) where a bill is payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not reissue the bill;
 - (b) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill.
- (4) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.
- 60. (1) When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority.
- (2) A draft or order drawn by a banker on the head office or a branch of his bank in Nigeria for a sum of money payable to order on demand shall be deemed to be a bill for the purposes of this section.
- 61. When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged.

- 62.(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged and the renunciation must be in writing unless the bill is delivered up to the acceptor.
 - (2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.
 - 63.(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
 - (2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.
 - (3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.
 - 64.(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent endorsers;
- Provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.
- (2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.
65. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
- (2) A bill may be accepted for the honour for the part only of the sum for which it is drawn.
- (3) An acceptance for honour *supra* protest in order to be valid must-
 - (a) be written on the bill, and indicate that it is an acceptance for honour;

- (b) be signed by the acceptor for honour.
- (4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.
- (5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.
- 66. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.
- (2) The acceptor for honour is liable to the holder and to all the parties to bill subsequent to the party for whose honour he has accepted.
- 67. (1) Where a dishonoured bill has been accepted for honour supra protest or contains a reference in case of presented for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.
- (2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the day following its maturity for presentment to him.
- (3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.
- (4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.
- 68. (1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
- (2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.
- (3) Payment for honour supra protest in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.
- (4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intentions to pay the bill for honour, and for whose honour he pays.
- (5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated

for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

- (6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.
- (7) Where the holder of a bill refuses payment *supra protest* he shall lose his right of recourse against any party who would have been discharged by such payments.
69. (1) Where a bill has been lost before it is overdue, the person who was the holder of it may apply for the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have lost shall be found again.
- (2) If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.
70. In any action or proceeding upon a bill, the court may order that the loss of the instrument shall not be set up, provided that an indemnity be given to the satisfaction of the court against the claims of any other person upon the instrument in question
71. (1) Where a bill is drawn in *asset*, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.
- (2) Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.
- (3) Where two or more parts of *asset* are negotiable to different holders in due course, the holder whose title first accrues is as between such holder deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.
- (4) The acceptance may be written on any part and must be written on one part only.
- (5) If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.
- (6) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and the part at maturity is outstanding in the hands of the holder in due course, he is liable to the holder thereof.

- (7) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.
72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows-
- (a) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance supra protest, is determined by the law of the place where such contract was made:
- Provided that-
- (i) Where a bill is issued out of Nigeria it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue,
- (ii) Where a bill issued out of Nigeria conforms, as regards requisites in form, to the law of Nigeria, it may, for the purpose of enforcing payments thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Nigeria;
- (b) subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract was made:

Provided that where an inland bill is endorsed in a foreign country the endorsement shall as regards the payer be interpreted according to the law of Nigeria;

- (c) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the Act is done or the bill is dishonoured;
- (d) Where a bill is drawn out of but payable in Nigeria and the sum payable is not expressed in the currency of Nigeria, the amount shall, in the absence of some expressed stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;
- (e) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

Part III

Cheques on a Banker

73. A cheque is a bill of exchange drawn on a banker payable on demand; and except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

74. Subject to the provisions of this Act-

- (a) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker. To a larger amount than he would have been had such cheque been paid;
- (b) in determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case;
- (c) the holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by-

- (a) countermand of payment;
- (b) notice of the customer's death.

76.(1) Where a banker, good faith and in the ordinary course of business, pays a prescribed instrument drawn on him to a banker, he does not in doing so incur any liability by reason only of the absence of, or irregularity in, endorsement of the instrument and

- (a) in the case of a cheque, he is deemed to have paid it in due course;
- (b) in the case of any other prescribed instrument, the payment discharges the instrument.

(2) A prescribed instrument which is unendorsed but appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum mentioned in the instrument.

(3) For the purposes of subsection (1) of section 60 of this Act (which provides that in certain circumstances a cheque shall be deemed to be paid in due course through its endorsement are forged or unauthorized), a document payable to order which is a prescribed instrument by virtue of paragraph (b) of subsection (1) of section 4 of this Act shall be deemed to be a bill payable to order on demand.

77.(1) A banker who gives value for, or has a lien on, cheque payable to order which the payee delivers to him for collection either without endorsing it regularly had such rights, if any, as he would have had if upon delivery the payee had endorsed it regularly in blank.

(2) Where a banker, in good faith and without negligence-

- (a) Receives payment for a customer of a prescribed instrument to which the customer has no title or a defective title; or
 - (b) having credited the customer's account with the amount of such a prescribed instrument, receives payment of the instrument for himself, the banker does not incur any liability to the true owner of the instrument by reason only of his having received payment of it; and a banker is not to be treated for the purpose of this subsection as having been negligent by reason only of his failure to concern himself with the absence of, or irregularity in, endorsement of a prescribed instrument of which the customer in question appears to be the payee.
 - (3) In this section and section 76 of this Act references to a payee do not include references to an endorsee under a special endorsement.
 - (4) Nothing in this section and section 76 of this Act shall make negotiable an instrument which apart from these sections is not negotiable.
- 78.(1) Where a cheque bears across its face an addition-
- (a) the words 'and company' or any abbreviation thereof between two parallel transverse lines either with or without the words "not negotiable"; or
 - (b) two parallel transverse lines simple, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed generally.
 - (2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially, and to that banker.
- 79.(1) A cheque may be crossed generally or specially by the drawer.
- (2) Where a cheque is uncrossed, the holder may cross it generally or specially
 - (3) Where a cheque is crossed is generally the holder may cross it specially.
 - (4) Where a cheque is crossed generally or specially, the holder may add the words not negotiable.
 - (5) Where a cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection.
 - (6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.
80. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter crossing.
- 81.(1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

- (2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated or to have been added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheques having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

82. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

83. Where a person takes a crossed cheque which bears on it the words “not negotiable”, he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

84. The provision of this Act relating to crossed cheques shall, so far as applicable, have effect in relation to a prescribed instrument other than a cheque as those provisions have effect in relation to a cheque.

Part IV

Promissory Notes

85.(1) A promissory note is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker’s order is not a note within the meaning of this section unless and until it is endorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

- (4) A note which is, or on the face of its purports to be, both made and payable within Nigeria is an inland note. Any other note is a foreign note.
86. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.
- 87.(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.
- (2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.
- 88.(1) Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement. If it be not so presented the endorser is discharged.
- (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument the usage of trade, and the facts of the particular case.
- (3) where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defect of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.
- 89.(1) Where a promissory note is in the body of it made presentment of note payable at a particular time, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.
- (2) Presentment for payment is necessary in order to render the endorser of a note liable
- (3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respect, shall also suffice.
- 90.(1) The maker of a promissory note by making it-
- (a) engages that he will pay it according to its tenor;
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.
- (2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.
- 91.(1) Subject to the provisions in this part of this Act, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

- (2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.
- (3) The following provisions as to bills do not apply to notes; namely, provisions relating to-
 - (a) presentment for acceptance
 - (b) acceptance;
 - (c) acceptance supra protest;
 - (d) bills in set.
- (4) Where a foreign note is dishonoured, protest thereof is unnecessary.

Part V

Supplementary

92. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.
- 93.(1) Where, by this Act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.
- (2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporal seal.
- (3) Nothing in this section shall be constructed as requiring the bill or note of a corporation to be under seal.
- 94.(1) Where, by this Act, the time limited for doing any Act or thing is less than three days, in reckoning time non-business days are excluded.
- (2) "Non-business days" for the purposes of this Act means-
 - (a) Sunday, Good Friday, Christmas Day;
 - (b) a public holiday.
 - (3) Any other day is a business day.
95. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.
- 96.(1) When a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate signed by them, attesting the

dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

(2) The form given in the schedule to this Act may be used with necessary modifications, and if used shall be sufficient.

97. The provision of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

98.(1) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(2) Nothing in this Act shall affect-

(a) the provisions of the Stamp Duties Act, or of any enactment, or orders amending it, or any enactment for the time being in force relating to the revenue;

(b) the validity of any usage relating to dividend warrants, or the endorsements thereof.

Schedule

Form of protest which may be used when the services of a Notary cannot be obtained

Know all men that I, A.B. (householder), of.....in
Nigeria, at the request of C.D., there being no notary public available, did on
the day of, 19, atdemand payment (or
acceptance) of the title of exchange hereunder written from E.F. to which
demand he made answer (state answer, if any), wherefore I now, in the
presence of G.H. and J.K.O protest the said bill of exchange

(Signed)

A.B.

G.H.

J.K. (witnesses)

N.B.- The bill itself should be annexed or a copy of the bill and all that is written thereon should be underwritten.

Chapter 20

Economic and Financial Crimes Commission (Establishment) Act, 2004

Arrangement of sections

Part I

Establishment of the Economic and Financial Crimes Commission, etc.

Section

1. Establishment of the Economic and Financial Crimes Commission.
2. Composition of the Commission.
3. Tenure of Office.
4. Vacancy in Membership.
5. Standing orders.

Part II

Functions of the Commission

6. Functions of the Commission.
7. Special powers of the Commission.

Part III

Staff of the Commission

8. Appointment of Secretary and other staff of the Commission.
9. Staff regulations.
10. Pensions.
11. Training programme.
12. Establishment of special units, etc.
13. Special duties of the units.

Part IV

Offences

14. Offences relating to Financial Malpractices
15. Offences in relation to terrorism.
16. Offences relating to false information.
17. Retention of proceeds of a criminal conduct.
18. Offences in relation to Economic and Financial Crimes and Penalties.
19. Jurisdiction and special powers of Court.
20. Forfeiture after conviction in certain cases.
21. Forfeiture of property.

- 22. Foreign assets.
- 23. Forfeiture of passports.
- 24. Property subject to forfeiture.
- 25. Further provisions as to forfeiture of property.
- 26. Seizure of property.

Part V

Forfeiture of Assets of Persons Arrested for Offences under this Act

- 27. Disclosure of assets and properties by an arrested person, etc.
- 28. Investigation of assets and properties of a person arrested of an offence under this Act, etc.
- 29. Interim forfeiture order.
- 30. Final order.
- 31. Final disposal of forfeited property.
- 32. Offences in relation to forfeiture orders.
- 33. Consequences of an acquittal in respect of assets and properties.
- 34. Freezing order on banks or other financial institutions.

Part VI

Financial Provisions

- 35. Funds of the Commission.
- 36. Accounts and audit.
- 37. Annual report.

Part VII

Miscellaneous Provisions

- 38. Power to receive information without hindrances, etc.
- 39. Protecting informants and information, etc., and penalty for false information.
- 40. Appeals against interlocutory ruling, etc.
- 41. Immunities.
- 42. General savings.
- 43. Regulations.
- 44. Repeal of Act No. 5 of 2002.
- 45. Savings.
- 46. Interpretation.
- 47. Short title.

Schedule

Forms

Economic and Financial Crimes Commission (Establishment) Act, 2004
An Act to repeal the Economic and Financial Crime Commission (Establishment) Act, No. 5 2002 and enact the Economic and Financial Crime Commission (Establishment, etc.) Act, 2004; and for matters connected therewith.

[2004 No. 1.] [4th June, 2004]

[Commencement]

PART I

Establishment of the Economic Financial Crimes Commission, etc.

1. Establishment of the Economic and Financial Crimes Commission

- 1) There is established a body to be known as the Economic and Financial Crimes Commission (in this Act referred to as “the Commission”) which shall be constituted in accordance with and shall have such functions as are conferred on it by this Act.
- 2) The Commission-
 - a) shall be a body corporate with perpetual succession and a common seal;
 - b) may sue and be sued in its corporate name and may, for the purposes of its functions, acquire, hold or dispose of property (whether movable or immovable);
 - c) is the designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.

2. Composition of the Commission

- 1) The Commission shall consist of the following members-
 - a) a Chairman, who shall-
 - i. be the chief executive and accounting officer of the Commission;
 - ii. be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant- Commissioner of Police or equivalent; and
 - iii. Possess not less than 15 years cognate experience;
 - b) the Governor of the Central Bank of Nigeria or his representative and
 - c) a representative each of the following Federal Ministries-
 - i. Foreign Affairs;
 - ii. Finance;
 - iii. Justice;
 - d) the Chairman, National Drug Law Enforcement Agency or his representative;
 - e) the Director-General of
 - i. the National Intelligence Agency or his representative;
 - ii. the Department of State Security Service or his representative;
 - f) the Registrar-General, of the Corporate Affairs Commission or his representative;
 - g) the Director-General, Securities and Exchange Commission or his representative;

- h) the Managing Director, Nigeria Deposit Insurance Corporation or his representative.
 - i) the Commissioner for Insurance or his representative;
 - j) the Postmaster-General of the Nigeria Postal Service or his representative.
 - k) the Chairman, Nigerian Communications Commission or his representative;
 - l) the Comptroller-General, Nigeria Customs Service or his representative;
 - m) the Comptroller-General, Nigeria Immigration Service or his representative;
 - n) the Inspector-General of Police or his representative;
 - o) four eminent Nigerians with cognate experience in any of the following, that is, finance, banking, law or accounting; and
 - p) the Secretary to the Commission who shall be the head of administration.
- 2) The members of the Commission, other than the Chairman and the Secretary, shall be part-time members.
- 3) The Chairman and members of the Commission other than ex-officio members shall be appointed by the President and the appointment shall be subject to confirmation of the Senate.

3. *Tenure of Office*

- 1) The Chairman and members of the Commission other than ex-officio members shall hold office for a period of four years and may be re-appointed for a further term of four years and no more.
- 2) A member of the Commission may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.
- 3) A member of the Commission may resign his membership by notice in writing addressed to the President and that member shall, on the date of the receipt of the notice by the President, cease to be a member.

4. *Vacancy in Membership*

Where a vacancy occurs in the membership of the Commission, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest as his predecessor.

5. *Standing orders*

The Commission may make standing orders regulating its proceedings or those of any of its committees.

PART II

Functions of the Commission

6. *Functions of the Commission*

The Commission shall be responsible for -

- a) The enforcement and the due administration of the provisions of this Act;
- b) The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- c) The co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- d) The addition of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds;
- e) The adoption of measures to eradicate the commission of economic and financial crimes;
- f) The adoption of measures which include co-ordinated preventative and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;
- g) The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;
- h) The examination and investigation of all reported cases of the economic and financial crimes with a view to identifying individual corporate bodies or groups involved;
- i) The determination of the extent of financial loss and such other losses by government, private individuals or organizations;
- j) Collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning-
 - i. The identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes;
 - ii. The movement of proceeds or properties derived from the commission of economic and financial and other related crimes.
 - iii. The exchange of personnel or other experts;
 - iv. The establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved;
- v. Maintaining data, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;

- vi. Undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effect of economic and financial crimes and advising government appropriate intervention measures for combating same;
- k) Dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;
- l) The collection of all reports relating to suspicious financial transactions, analyse and disseminate to all relevant government agencies;
- m) Taking charge of, supervising, controlling, co-ordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes
- n) The co-ordination of all existing, economic and financial crimes investigating units in Nigeria;
- o) Maintaining a liaison with the office of the Attorney-General of the Federation, the Nigerian Custom Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisor institutions involved in the eradication of economic and financial crimes;
- p) Carrying out and sustaining rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria; and
- q) Carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under this Act.

7. Special powers of the Commission

- 1) The Commission has power to-
 - a) cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other law relating to economic and financial crimes;
 - b) cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's lifestyle and extent of the properties are not justified by his source of income.
- 2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of –
 - a) the Money Laundering Act, 2004; 2003 No. 7, 1995 No. 13;
 - b) the Advance Fee Fraud and Other Related Offences Act, 1995;

- c) the Failed Banks (Recovery of Debt and Financial Malpractices Banks) Act, as amended;
- d) the Banks and Other Financial Institution Act, 1991, as amended;
- e) the Miscellaneous Offences Act; and
- f) any other law or regulatory relating to economic and financial crimes, including the Criminal Code and Penal Code.

Part III

Staff of the Commission

8. Appointment of Secretary and other Staff of the Commission

- 1) There is established for the Commission a secretariat which shall be headed by the Secretary who shall be appointed by the President.
- 2) The secretary shall be-
 - a) The head of the Secretariat of the Commission;
 - b) Responsible for the administration of the secretariat and the keeping of the books and records of the Commission;
 - c) Appointed for a term of five years in the first instance and may be re-appointed for a further term of five years subject satisfactory performance; and
 - d) Subject to the supervision and control of the chairman and the Commission.
- 3) The Commission may, from time to time, appoint such other staff or second officers from government security or law enforcement agencies or such other private or public service as it may deem necessary to assist the Commission in the performance of its functions under this Act.
- 4) The staff of the Commission appointed under subsection (3) of this section, shall be appointed upon such terms and conditions as the Commission may, after consultation with the Federal Civil Service Commission determine.
- 5) For the purpose of carrying out or enforcing the provisions of this Act, all officers of the Commission involved in the enforcement of the provisions of this Act shall have the same powers, authorities and privileges (including power to bear arms) as are given by law to members of the Nigeria Police.

9. Staff Regulations

- 1) The Commission may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the commission and without prejudice to the generality of the foregoing, the regulation may provide for-
 - a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Commission; and
 - b) appeals by such employees against dismissal or other disciplinary measures, and until the regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the Federation shall be applicable,

with such modifications as may be necessary, to the employees of the Commission.

- 2) Staff regulations made under subsection (1) of this section shall not have effect until approved by the Commission, and when so approved the regulations may not be published in the Gazette but the Commission shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

10. Pensions

- 1) Service in the Commission shall be public service for the purposes of the Pensions Act and, accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission, be entitled to pension, gratuities and other retirement benefits as are prescribed thereunder, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension or gratuity in respect to that office.

[L.F.N. 2004 Cap. P4.]

- 2) For the purposes of the application of the provisions of the Pensions Act, any power exercisable under the Act by a Minister or other authority of the Government of the Federation (not being the power to make regulations under section 23 thereof) is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

11. Training programme

The Commission shall initiate, develop or improve specific training programmes for its law enforcement and other personnel charged with responsibility for the eradication of offences created by this Act and such programme shall include -

- a) methods used in the detection of offences created under this Act;
- b) techniques used by persons involved in offences created under this Act and appropriate counter-measures;
- c) detection and monitoring of the movement of proceeds and property derived from economic and financial crimes intended to be used in the commission of offences under this Act;
- d) methods used for the transfer, concealment or disguise, of such proceeds, property and instruments;
- e) collection of evidence;
- f) law enforcement techniques;
- g) legal prosecution and defence; and
- h) dissemination of information on economic and financial crime and related offences.

12. Establishment of special units, etc.

- 1) For the effective conduct of the functions of the commission, there may be established for the Commission the following units-
 - a) The General and Assets Investigation Unit;
 - b) The Legal and Prosecution Unit;
 - c) The Research Unit;
 - d) The Administration Unit; and
 - e) The Training Unit.
- 2) Notwithstanding the provisions of subsection (1) of this section, the Commission has power to set up any unit or committee as may be necessary to assist the Commission in the performance of its duties and functions under this Act.

13. Special duties of the units

- 1) The General and Assets Investigation Unit shall be charged with the responsibility for-
 - a) The prevention and detection of offences in violation of the provisions of this Act;
 - b) The arrest and apprehension of economic and financial crimes perpetrators;
 - c) The investigation of assets and properties of persons arrested for committing any offence under this Act;
 - d) The identification and tracing of proceeds and properties involved in any offence under this Act and the forfeiture of such proceeds and properties to the Federal Government;
 - e) Dealing with matters connected with extradition and mutual assistance in crime matters involving economic and financial crimes.
- 2) The Legal and Prosecution Unit shall be charged with the responsibilities for-
 - a) Prosecuting offenders under this Act;
 - b) Supporting the General Assets Investigating Unit by providing the unit with legal advice and assistance whenever it is required.
 - c) Conducting such proceedings as may be necessary towards the recovery of any assets or property forfeited under this Act;
 - d) Performing such other legal duties as the Commission may refer to it, from time, to time.
- 3) There shall be appointed for each of the Units a principal officer who shall be known by such designation as the Commission may determine.

PART IV

Offences

14. Offences relating to financial malpractices

- 1) A person who, being an officer of a bank or other financial institution or designated non-financial institution –
 - a) fails or neglects to secure compliance with the provisions of this Act; or
 - b) fails or neglects to secure authenticity of any statement submitted pursuant to the provisions of this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of five hundred thousand naira (₦500,000) or both such imprisonment and fine.
- 2) Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.
- 3) All moneys received by the Commission under the provisions of subsection (2) of this section shall be paid into the Consolidated Revenue Fund of the Federation.

15. Offences in relation to terrorism

- 1) A person who wilfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used by any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life.
- 2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits offence under this Act and is liable on conviction to imprisonment for life.
- 3) Any person who makes, funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in commission of a terrorist act is liable on conviction to imprisonment for life.

16. Offences relating to false information

- 1) Any person who in the discharge of his duty under this Act gives information which is false in any material particular to a public officer or a person who is to take decision or do any other act in relation thereto commits an offence under this Act and the onus shall be on him to prove that he exercised due diligence to prevent the commission of the offence having regards to the nature of his function and circumstances.
- 2) The penalty for the offence under subsection (1) Of this section shall be imprisonment for a term not less than two years and not more than three years

provided that where the offender is a public officer the penalty shall be imprisonment for a term not less than three years and not more than five years.

- 3) Without prejudice to the provisions of any other enactment, any regulatory agency or body in the financial sector shall in the exercise of functions, liaise with the Commission to investigate and monitor the commission of economic and financial crimes.

17. Retention of proceeds of a criminal conduct

A person who-

- a) Whether by concealment, removal from jurisdiction, transfer to nominees or otherwise retains the control of the proceeds of an economic or financial crime on behalf of another person knowing that the proceeds are as a result of criminal conduct by the principal or
- b) Knowing that any person in whole or in part, directly or indirectly representing another person's proceeds of an economic or financial crime, acquired or uses that property or has possession of it, commits an offence and is liable on conviction to imprisonment for a term not less than three years or to a fine equivalent to 100 per cent of the proceeds of the economic or financial crime or to both such imprisonment and fine.

18. Offences in relation to economic and financial Crimes and penalties

- 1) A person who –
 - a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act;
 - b) engages in the management, organization or financing of any of the offences under this Act;
 - c) engages in the conversion transfer of property' knowing that such property is derived from any offence under this Act; or
 - d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from any offence under this Act, commits an offence under this Act and is liable on conviction to the penalties provided in subsection (2) of this section.
- 2) The penalties for offences under subsection (1) shall be imprisonment for a term not less than two years and not exceeding three years.

19. Jurisdiction and special powers of Court

- 1) The Federal High Court or High Court of a State or the Federal Capital Territory has jurisdiction to try offenders under this Act.

- 2) The Court shall have power, notwithstanding anything to the contrary in any other enactment –
 - a) to impose the penalties provided for in this Act;
 - b) to ensure that all matters brought before the Court by the Commission against any person, body or authority shall be conducted with dispatch and given accelerated hearing;
 - c) to adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters brought by the Commission before it or against any person, body or authority.
- 3) The Chief Judge of the Federal High Court or a High Court of a State or the High Court of the Federal Capital Territory Abuja, as the Case may be, shall by order under his hand, designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases under this Act or other related offences arising under this Act.
- 4) A court or judge so designated shall give such matters priority over other matters pending before it.
- 5) In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known source of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and taken into consideration by the Court as corroborating the testimony of any witness in the trial.

20. Forfeiture after conviction in certain cases

- 1) A person convicted of an offence under this Act shall forfeit to the Federal Government-
 - a) All the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;
 - b) Any asset or property confiscated, or derived from any proceeds the person obtained, directly or indirectly, as a result of such offence not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

[Schedule.]

- c) Any of the person's property or instrumentalities used in any manner to commit or to facilitates the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under paragraph (a) of this subsection.

- 2) The court in imposing a sentence on any person under this section shall order, in addition to any other sentence imposed pursuant to this Act, that the person forfeit to the Federal Government all properties described in subsection (1) of this section.
- 3) In this section, “proceeds” means any property derived or obtained, directly or indirectly, through the commission of an offence under this Act.

21. Forfeiture of property.

For the avoidance of doubt and without any further assurance than this Act all the properties of a person convicted of an offence under this Act and shown to be derived or acquired from such economic or financial crime and already the subject of an interim order shall be forfeited to the Federal Government.

22. Foreign assets

- 1) Where it is established that any convicted person has assets or properties in a foreign country, acquired as a result of such economic or financial crime, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Government.
- 2) The Commission shall, through the office of the Attorney-General of the Federation, ensure that the forfeited assets or properties are effectively transferred and vested in the Federal Government.

23. Forfeiture of passports

The passport of any person convicted of an offence under this Act shall be forfeited to the Federal Government and shall not be returned to that person till he has served any sentence imposed or unless or until the President directs otherwise after the grant of a pardon or on the exercise of the prerogative of the mercy under the Constitution of the Federal Republic of Nigeria, 1999.

24. Property subject to forfeiture

Any property -

- a) whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;
- b) within Nigeria which represents the proceeds of an offence under the laws of a foreign country within whose jurisdiction such offence or activity would be punishable by imprisonment for a term exceeding one year and which would be punishable by imprisonment under this Act if such act or activity shall had occurred within Nigeria, is subject to forfeiture to the Federal Government and no other property rights shall exist on it.

25. Further provisions as to forfeiture of property

Without prejudice to the provisions of any other law permitting the forfeiture of property, the following shall also be subject to forfeiture under this Act and no proprietary right shall exist in them-

- a) all means of conveyance, including aircraft, vehicles, or vessels which are used or are intended for use to transport or in any manner, to facilitate the transportation, sale, receipt, possession or concealment of economic or financial crime except that-
 - i. no means of conveyance used by an person as a common carrier in the transaction of business as common carrier shall be forfeited under this section unless it shall appear that the owner or other person in charge of such means of conveyance was a consenting party or privy to a violation of this Act,
 - ii. no means of conveyance shall be forfeited under this section by reason of any act established by the owner thereof to have been committed by any person other than such owner while, such means of conveyance was unlawful in the possession of a person other than the owner in violation of the criminal law of Nigeria or any part thereof; and
 - iii. no means of conveyance shall be forfeited under this section to the extent of an interest of an owner, by reason of any act established by that owner to have been committed without the knowledge, consent or wilful connivance of that owner;
- b) all books, records, research, materials and data used or intended to be used in violation of any provision of this Act;
- c) all monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for any illegal act or in violation of this Act or all proceeds traceable to such an exchange, and all monies, negotiable instruments and securities used or intended to be used to facilitate any violation of this Act;
- d) all real property, including any right, title and interest (including any leasehold interest) in the whole or any piece or parcel of land and any improvements or appurtenances which is used or intended to be used in any manner or part to commit, or facilitate the commission of an offence under this Act.

26. Seizure of property

- 1) Any property subject to forfeiture under this Act may be seized by the Commission in the following circumstances –
 - a) the seizure is incidental to an arrest or search; or
 - b) in the case of property liable to forfeiture upon process issued by the Court following an application made by the Commission in accordance with the prescribed rules.

- 2) Whenever property is seized under any of the provisions of this Act, the Commission may –
 - a) place the property under seal; or
 - b) remove the property to a place designed by the Commission.
- c) Properties taken or detained under this section shall be deemed to be in the custody of the Commission, subject only to an order of a Court.

PART V

Forfeiture of Assets of Persons Arrested for Offences under this Act

27. Disclosure of assets and properties by an arrested person, etc.

- 1) Where a person is arrested for committing an offence under this Act, such person shall make a full disclosure of all his assets and properties by completing the Declaration of Assets Form as specified in Form A of the Schedule to this Act.
[Schedule.]
- 2) The completed Declaration of Assets Form shall be investigated by the Commission.
- 3) Any person who –
 - a) knowingly fails to make full disclosure of his assets and liabilities; or
 - b) knowingly makes a declaration that is false; or
 - c) fails, neglects or refuses to make a declaration or furnishes any information required, in the Declaration of Assets Form, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years.
- 4) Subject to the provisions of section 24 of this Act, whenever the assets and properties of any person arrested under this Act are attached, the Commission shall apply to the Court for an interim forfeiture order under the provisions of this Act.
- 5) The Chairman of the Commission shall have powers to make sure changes or modifications to the Declaration of Assets Form specified in form A of the schedule to this Act as may become necessary in order to give effect to the provisions of this Act.

[Schedule]

28. Investigation of assets and properties of a person arrested of an offence under this Act, etc.

Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the Court.

29. Interim Forfeiture Order

Where-

- a) The assets or properties of any person arrested for an offence under this Act has been sized; or
- b) Any assets or property has been seized by the Commission under this Act, the Commission shall cause an ex-parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.

30. Final Order

Where a person is convicted of an offence under this Act, the Commission or any authorized officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and property acquired or obtained as a result of the crime subject to an interim order under this Act.

31. Final disposal of forfeited property

- 1) A copy of every final order forfeiting the asset and property of a person convicted under this Act shall be forwarded to the Commission.
- 2) Upon receipt of a final order pursuant to this section, the Secretary to the Commission shall take steps to dispose of the property concerned by sale or otherwise and were the property is sold, the proceeds thereof shall be paid into the Consolidated Revenue Fund of the Federation.
- 3) Where any part of the property included in a final order is money in a bank account or in the possession of any person, the Commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and the manager or person shall forthwith pay over the money to the Commission without any further assurance than this Act and the Commission shall pay the money received into the Consolidation Revenue Fund of the Federation.
- 4) The Attorney-General of the Federation may make rules or regulations for the disposal or sale of any property or assets forfeited pursuant to this Act.

32. Offences in relation to forfeiture orders

- 1) Any person who, without due authorization by the Commission, deals with, sells or otherwise disposes of any property or asset which is the subject of an attachment, interim order or final order, commits an offence and is liable on conviction to imprisonment for a term of five years without the option of a fine.
- 2) Any manager or person in control of the head office or branch of a bank, other financial institution or designated non-financial institution who fails to pay

over to the Commission upon the production to him of a final order, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than one year and not more than three years, without the option of a fine.

33. Consequences of an acquittal in respect of assets and properties

- 1) Where a person is discharged or acquitted by a court of an offence under this Act, the Court may make an order of revocation or confirmation as the case may be, of an interim order made pursuant to this Act whichever order is considered just, appropriate or reasonable in the circumstances.
- 2) The property may be attached where a discharge is merely given on technical grounds.
- 3) Where an interim order is revoked by a court under subsection (1) of this section, all assets and properties of the person concerned shall be released to him by the Commission.

34. Freezing order on banks or other financial institutions

- a) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act and/or any of the enactments specified under section 7 (2) (a) to (f) of this Act, apply to the Court ex parte for power to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution or designated non-financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non-financial institution to freeze the account.

[Schedule]

- b) The Chairman of the Commission, or any other authorized by him may by an order issued under subsection (1) of this section, direct the bank, other financial institution or designated non-financial institution to supply any information and produce books and documents relating to the account to stop all outward payment, operations or transactions (including any bill of exchange) in respect of the account of the person.
- c) The manager or any other person in control of the financial institution shall take necessary steps to comply with the requirements of the order made pursuant to subsection (2) of this section.
- d) In this section-
 - a) “bank” has the meaning given to it in the Banks and Other Financial Institutions Act, 1991 as amended, 1991 No. 25;

- b) The reference to an order issued includes a reference to any order, direction or requirement addressed to the manager of a bank or any other office of a bank which directs or purports to direct the manager or such officer to stop all outward payments, operations or transactions in respect of any account with the bank.

PART VI

Financial Provisions

35. Funds of the Commission

- 1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure reasonably incurred by the Commission in the execution of its functions under this Act.
- 2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section, such monies as may in each year be approved by the National Assembly for the purpose of the Commission.
- 3) The Commission may accept gifts of land, money or other property (whether within or outside Nigeria) upon such terms and conditions, if any, as may be specified by the person or organization making the gift provided that the terms and conditions are not contrary to the objectives and functions of the Commission under this Act.

36. Accounts and audit

The Commission shall keep proper accounts in a form, which conforms to accepted commercial standards of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from the list of auditors and in accordance with the guidelines supplied by the Auditor-General for the Federation.

37. Annual report

The Commission shall, not later than 30th September in each year, submit to the National Assembly, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the Commission.

PART VII

Miscellaneous Provision

38. Power to receive information without hindrances, etc.

- 1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.
- 2) A person who –
 - a) wilfully obstructs the Commission or any authorized officer of the Commission in the exercise of any of the powers conferred on the Commission by this Act; or

- b) fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provisions of the Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of ₦500,000 or to both such imprisonment and fine.

39. Protecting informants and information, etc., and penalty for false information

- 1) Officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by the order of the Court.
- 2) Any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-
 - a) Is false, or intended to mislead or is untrue in any material particular;
 - b) Is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall on conviction be liable to fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment;
- c) Where any person who has made a statement to an officer of the Commission or to the Attorney-General in the course of such officer or Attorney-General exercising any power conferred by this Act, subsequently thereto make any other statement to any person having authority or power under any law to receive or require to be made such other statement is under a legal or other obligation to tell the truth, he shall, if such other statement is inconsistent with any statement previously made to an officer of the Commission or such other public officer, be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or to both; and;
- d) For the purpose of subsections (1) and (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

40. Appeals against interlocutory ruling, etc.

Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court.

41. Immunities

Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case under this Act, shall have all the powers and immunities of a Police Officer under the Police Act, and any other law conferring power on the police, or empowering and protecting law enforcement agencies.

42. General savings

Any offence committed or proceedings instituted before the commencement of this Act under the provisions of-

- a) the Miscellaneous Offences Act,
- b) the Banks and Other Financial Institutions Act, 1991 as amended;
- c) the Failed Banks (Recovery of Debt and Financial Malpractice in Banks) Act, as amended;
- d) the Advance Fee Fraud and Other Related Offences Act;
- e) the Money Laundering Act; and
- f) any other law or regulation relating to Economic and Financial Crimes, shall as the case may require be enforced or continue to be enforced by the Economic and Financial Crimes Commission established under this Act.

43. Regulations

The Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under this Act.

44. Repeal of Act No. 5 of 2002

The Economic and Financial Crimes Commission (Establishment) Act, No. 5 of 2002 is repealed.

45. Savings

The repeal of the Act specified in section 44 of this Act shall not affect anything done or purported to be done under or pursuant to the Act.

46. Interpretation

In this Act-

“Commission” means the Economic and Financial Crimes Commission established by section 1 of this Act;

“Court” means the Federal High Court or the High Court of the Federal Territory or the High Court of a state;

“Designated Non-financial Institution” mean dealers in jewellery, cars and luxury goods, chartered accounts, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may, from time to time, designate;

“Economic and financial crimes” means the non-violent crimes and illicit activity committed with the objectives of earning wealth illegal either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour and privacy, open market abuse, dumping of toxic wastes and prohibited goods, etc.

“Financial Institution” means banks, body, association or groups of persons, whether corporate or incorporate which carries on the business investment and securities, a discount house, insurance, institutions, debt brokerage firm whose principal business includes factoring, projecting, financing, equipment leasing, debt administration, fund management, private, ledger services, Investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other businesses as the Central Bank or other appropriate regulatory authorities may, from time to time, designate;

“other appropriate regulatory authorities” includes the Securities and Exchange Commission, the National Insurance Commission and the Federal Ministry of Commerce;

“terrorism: means -

- a) any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or property, natural resources, environmental or cultural heritage and is calculated or intended to -
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of thereof, to do or abstain from doing any act or to adopt a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - (iii) create general insurrection in a State;

- b) any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organization or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i), (ii) and (iii).

47. Short title

This Act may be cited as the Economic and Financial Crimes Commission (Establishment, etc.) Act, 2004.

SCHEDULE [Sections 20 and 27.]

CONFIDENTIAL FORM A

**ECONOMIC AND FINANCIAL CRIMES COMMISSION ACT, 2004
DECLARATION OF ASSETS FORM**

To be completed in triplicate and in BLOCK LETTERS or typed all available information should be included

Important-

It is an offence punishable by up to a maximum of five years imprisonment under the Act to-

- (A) (i) Knowingly fail to make full disclosure of your assets and liabilities;
(ii) Knowingly make a declaration that is false;
(iii) Fail, neglect or refuse to make a declaration or furnish any information required.
- (B) (i) Each item is to be completed, if it does not apply, the person affected must write "nil" or "none" in the space. Where necessary an extra sheet may be used and attached to his form by the person affected.
(ii) The form shall be addressed to the Executive Chairman or any other officer of the Commission authorized by him.

I,be
ing accused of an offence.....
Under the Economic and Financial Crimes Commission Act, 2004 hereby
declare my assets as follows-

Chapter 21

Corrupt Practices and Other Related Offences Act, 2000

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation.
3. Establishment of the anti-corruption commission, composition, tenure and removal from office, etc.
4. Appointment of staff, etc., and remuneration.
5. Pensions L.F.N. 2004 Cap. P4
6. Secretary of the Commission.
7. Production of identification card.
8. Quorum for meetings.
9. Powers and immunities of officers of the Commission.
10. General duties of the Commission to receive, investigate complaint and prosecute offenders, etc.
11. Standing orders.
12. Gratification by an official.
13. Corrupt offers to public officers.
14. Corrupt demand by persons.
15. Fraudulent acquisition of property.
16. Fraudulent receipt of property.
17. Penalty for offences committed through postal system.
18. Deliberate frustration of investigation by the commission.
19. Making false statement or return.
20. Gratification by and through agents.
21. Bribery of public officer.
22. Using office or position for gratification
23. Forfeiture of gratification and other penalties.
24. Bribery in relation to auction.
25. Bribery for giving assistance, etc., in regard to contracts.
26. Duty to report bribery transactions.

27. Dealing with, using, holding, receiving or concealing gratification.
28. Making false or misleading statement to the commission
29. Attempts, conspiracies, abetments, punishable as offence.
30. Delegation of Attorney-General's power to prosecute.
31. Power to investigate reports and enquires into information.
32. Power to examine persons.
33. Summons against suspects.
34. Forms and service of summons.
35. Service of summons.
36. Substituted services.
37. Detention of person refusing to acknowledge service.
38. Offence under Act to be seizable offences and bailable, etc.
39. Prohibition of dealing with property outside Nigeria.
40. Prohibition of dealing with property outside Nigeria.
41. Forfeiture of property upon prosecution for an offence.
42. Independent counsel to investigate President, etc.
43. Presumption in certain offences, etc.
44. Public evidence of corroboration.
45. Presumption in favour of admissibility of certificate issued by principle or employer, etc.
46. Joinder of offences.
47. Certificate of indemnity in favour of full disclosure.
48. Protection of informers and information.
49. Protection of officers of the commission.
50. Liability for offences outside Nigeria.
51. Application of provisions of this Act to any prescribed offence.
52. General penalty for other offences.
53. Powers of police officers under this Act.
54. Right of appeal.
55. Repeal of Act No. 5 of 2000.
56. Appointments under the Corrupt Practices and Other Related Offences Act, 2000.

CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT
An Act to prohibit and prescribe punishment for corrupt practices and other related offences and to establish Anti-Corruption Commission.

[2003 No. 6]

[18th May, 2003]

[Commencement.]

1. Short title

This Act may be cited as the Corrupt Practices and Other Related Act, 2003.

2. Interpretation

This Act-

“Agent” means any person employed by or acting for another and include an officer of a public body or an officer serving in or under any public body, or a corporate body or any political party or institution, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, any person employed by or acting for such trustee, administrator, executor, or sub-contractor.

“Associate”, in relation to a person includes any person who is an employee, agent, nominee or representative, trustee, firm or incorporated company known to act subject to the directives or influence of such person;

“Bank” means a bank, a finance company, a commercial Bank, a Merchant Bank, or a discount house, licensed under the Banks and Other Financial Institutions Act, or any other financial institution established or licensed under any other written law;

“Banker’s book” includes ledgers, day books, cash books, account books and other books and documents or elements or electronic devices used in the ordinary course of business of a bank;

“Business” means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activities, and all the rights and liabilities arising from such activity;

“Chairman” means the Chairman of the Commission appointed under section 3(3) of this Act;

“Commission” means the Anti-Corruption Commission established under section 3 of this Act;

“Constitution” means Constitution of the Federal Republic of Nigeria 1999;

“Corporate Body” means any legal entity artificial or otherwise recognized by the companies and Allied Matters Act or created under the authority of any law in Nigeria;

“corruption” includes bribery, and other related offences;

“dealing” includes-

- a) Any purchase sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, or extension of credit;
- b) Any agency or grant of power of attorney and

c) Any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part any property being conferred on any person.

“False pretence” means any representation made by word, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be or does not believe to be true;

“Financial Institution” means anybody or institution which carries on any banking or financial transactions whether lawfully or unlawfully as defined in the bank and other Financial Institutions Act;

“Gratification” means-

- a) Money, donation, gift, loan fee, reward, valuable security, property or interest being property of any description whether movable or immovable, or any other similar advantages, given or promised to any person with intent to influence such a person in the performance or non-performance of his duties;
- b) Any office, dignity, employment, contract of empowerment or services and any agreement to give empowerment or render services in any capacity;
- c) Any payment, release, discharge or liquidation of any loans, obligation or other liability, whether in whole or in part;
- d) Any valuable consideration of any kind, any discount, commission rebate, bonus, deduction or percentage;
- e) Any forbearance to demand any money or money’s worth or valuable thing;
- f) Any other service or favour of any description, such as protection for any penalties or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not, already instituted, and including the exercise or the forbearance from the exercise of any rights or any official power or duty; and
- g) Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the proceeding paragraphs (a) to (f);

“Judge of Superior Court of Record” means a judge holding any of the offices defined by section 6(5) of the Constitution;

“Local Governor” has the meaning assigned to it in the Constitution of the Federal Republic of Nigeria.;

“Member” means any member of the Commissions appointed in accordance with section 3 of this Act;

“money instrument” includes coin or currency of Nigeria or of any other country, travellers cheque, personal cheque, bank cheque, money order, investment security or negotiable instrument in bearer form or otherwise in such form that title hereto passes upon delivery or upon delivery and endorsement;

“misappropriation” means the unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intention and it also includes misapplication of funds or property and it does not matter whether or not the person misappropriating derives any personal benefit therefrom;

“an official” means any director, functionary, officer, agents, servant, privy or employee serving in any capacity whatsoever in the public body, or in any private organization, corporate body, political party institution or other empowerment whether under a contract of service or contract for service or otherwise, and whether in an executive capacity or not;

“Person” includes a natural person, a juristic person or anybody persons corporate or incorporate;

“Political party” means anybody of persons or association as stated under the provisions of the Constitution;

“President” means the President of the Federal Republic of Nigeria.

“Principal” includes any employer, any beneficiary under a trust, any trust estate, any person beneficially interested in the estate of a deceased person, the estate of a deceased person, and, in the case of any person serving in or under a public body;

“property” means real or personal property of every description including money, whether situated in Nigeria or elsewhere, whether tangible or intangible, and includes an interest in any such or person property;

“public officer” means a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in Magistrate or Customary Courts or Tribunals;

“purchaser in good faith valuable consideration” means any transferee, assignee, charges, mortgage, pledgee, holder of a lien, or lessee, of any property where the transfer, assignment, charge, mortgage, pledge, lien or lease was obtained by him for adequate consideration in money or money’s worth, without notice that the property was obtained in consequence of the commission of any offence under this Act;

“relation” includes father, mother, child, brother, sister, uncle, aunt and cousin where applicable and their spouses.

3. *Establishment of the Anti-Corruption Commission, composition, tenure and removal from office, etc.*

- 1) There is established a body to be known as the Anti-Corruption Commission (hereafter in this Act referred to as “The Commission”).

- 2) The Commission shall be a body corporate with perpetual success and common seal and may sue and be sued in its corporate name.
- 3) The Commission shall consist of a Chairman and twelve (12) other members, two of whom shall come from each of the six geo-political Zone
- 4) The Chairman shall be a serving Judge of the Court of Appeal.
- 5) Remuneration for members of the Commission shall be determined by the National Revenue Mobilization, Allocation and Fiscal Commission.
- 6) The Chairman and members of the Commission who shall be persons of proven integrity shall be appointed by the Chief Justice of Nigeria upon advice of the National Judicial Council subject to the confirmation by the Senate.
- 7) In making the appointment in subsection (6), the Chief Justice of Nigeria shall ensure that the following categories are represented in the appointment-
 - a) a retired police officer not below the rank of Commissioner of Police;
 - b) a legal practitioner with a least ten years post call experience;
 - c) a retired judge of a superior court of record;
 - d) a retired public servant not below the rank of a director;
 - e) a woman;
 - f) a youth not being less than 21 years or more than 30 years of age at the time of his or her appointment; and
 - g) a chartered accountant.
- 8) The chairman and members of the Commission shall not discharge the duties of their offices until they have declared their assets and liabilities as prescribed in the constitution of the Federal Republic of Nigeria.
- 9) The chairman shall be eligible to the same terms and conditions of service as are applicable to a serving Justice of the Court of Appeal.
- 10) The chairman shall hold office for five (5) years only.
- 11) The members shall hold office for a period of four (4) years and may be reappointment for another four (4) years but shall not be eligible for reappointment thereafter.
- 12) Notwithstanding the provisions of sections 3(1) and (11) of this Act, the chairman and any member of the Commission may at any time be removed from the office by the Chief Justice of Nigeria upon the advice of the National Judicial Council subject to approval of the Senate.
- 13) The chairman or any member of the Commission may resign his appointment by notice in writing under his hand addressed to the Chief Justice of Nigeria and the Chairman or that member shall on the date of the receipt of the notice of resignation by the Chief Justice of Nigeria cease to be a member of the Commission.

- 14) The members of the Commission shall hold office on such terms and conditions as may specified in their instrument of appointment, and the exercise of their functions, they shall not be subject to any other authority except as provided by this Act.
- 15) Every member of the Commission shall, before assuming the duties of his office, subscribe to the oath prescribed in the Constitution of the Federal Republic of Nigeria.

4. Appointment of Staff, etc. and remuneration

- 1) The Commission shall have power to appoint, dismiss and exercise disciplinary control over its staff and for this purpose shall prescribe its own rules and regulations.
- 2) The Commission shall have power to appoint designate and deploy such number and category of staff and officers which, in the opinion of the Commission, shall be required to assist it in the discharge of all or any of the functions and shall have powers to pay persons so employed such remuneration (including allowances) as is in accordance with section 3(14) of this Act.
- 3) The Tenure of office and conditions of service of the staff of the commission shall, subject to the provisions of this Act, be determined by the Commission.
- 4) There shall be appointed such number of Commissioners, Deputy Commissioners, Assistant commissioners, Superintendents, Assistant Superintendents, Senior Investigators and Investigators of the Commissioner as may be necessary for the purpose of carrying into effect the provisions of this Act.

5. Pensions L.F.N. 2004 Cap. P4

Service in the Commission shall be approved service for the purpose of the Pension Act.

[L.F.N. 2004. Cap. P4]

6. Secretary of the Commission

There shall be a secretary to the Commission appointed by a two-thirds ($\frac{2}{3}$) majority, of the members present and voting who, shall be responsible for keeping the records of the Commission and the general administration and control of the staff of the Commission.

7. Production of identification card

Every officer of the Commission, when discharging the duties of his office, shall, on demand, declare his office and produce to the person against whom he is acting or from whom he seeks any information, evidence of his Identity issued by the Commission.

8. Quorum for meetings

The Chairman and any five (5) members of the Commission representing at least four (4) geo-political zones shall constitute a quorum.

9. Powers and immunities of officers of the Commission

- 1) Subject to the provisions of this Act, an officer of the Commission when investigating any matter which constitutes an offence under this Act, shall have all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the Police, or empowering and protecting law enforcement agents.

[L.F.N. 2004 Cap. P19.]

- 2) If, in the course of any investigations in respect of the Commission of an offence under this Act by any person, there is disclosed an offence under any other written law, not being an offence under this Act, irrespective of whether the offence was committed by the same person or any other person, the officer of the Commission responsible for the investigation, shall notify the Director of Public Prosecutions or any other officer charged with the responsibility for the prosecution of criminal cases, who may issue direction as shall meet the justice of the case.

10. General duties of the Commission to receive investigate complaint and prosecute offenders, etc. The Commission shall -

- a) Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases make its recommendation for prosecution or otherwise to the office of the Attorney-General of the Federation or of the State;
- b) Examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
- c) Instruct, advise and assist any officer, agency or parastatal on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal.
- d) Advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences.
- e) Educate the public on and against bribery, corruption and related offences; and

f) Enlist and foster public support in combating corruption.

11. Standing Orders

- 1) The commission may issue administrative orders to be called “Standing Orders”, which shall conform with the provisions of the general control, training, duties and responsibilities of officers of the Commission, and for such other matters as may be necessary or expedient for the good administration of the Commission and to ensure the efficient and effective functioning of the Commission.
- 2) The commission may establish one or more branch offices in each state of the Federation and the Capital Territory, Abuja to carry out its functions under this Act.
- 3) There may be in each State of the Federation and the Federation Capital Territory, Abuja, a Resident Anti-Corruption Commissioner.

12. Gratification by an official

- 1) Any person who corruptly-
 - a) Ask for, receives or obtains any property or benefit of any kind for himself or for any other person; or
 - b) Agrees or attempt to receive or obtain any property or benefit of any kind for himself or for any other person, on account of-
 - i. Anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs, or business of a government department, or corporate body of other organization or institutions in which he is serving as an official; or
 - ii. anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and is liable to imprisonment for seven (7) years.
- 2) If in any proceedings for an offence under this section it is proved that any property or benefit of any kind, or any promise thereof, was received by a public officer, or by some other person at the instance of a public officer from a person –
 - a) holding or seeking to obtain a contract, license, permit, employment from a government department, public body or other organization or institution in which that public officer is serving as such;
 - b) concerned, or likely to be concerned, in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department; public body or other organization or institution in which that public officer is serving as such; or

- c) acting on behalf of or related to such a person, the property, benefit or promise shall, unless the contrary is proved, be presumed to have been received corruptly on account of such past or future act, omission, favour or disfavour as is mentioned in subsection (1) (a) or (b)

13. Corrupt offers to public officers

- 1) Any person who corruptly-
 - a) gives, confers or procures any property or benefit or any kind, to, on or for a public officer or to, on or for any other person; or
 - b) promises or offers to give, confers, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer, is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.
- 2) If in any proceedings for an offence under this section, it is proved that any property or benefit of any kind, or promise thereof, was given to a public officer or some other person at the instance of a public officer, by a person -
 - a) Holding or seeking for obtain or contract, permit employment from a government department, public body or other organization or institution in which that public officer is serving as such; or
 - b) Concern or likely to be concerned in any proceeding or business transaction, pending or likely to be transacted before or by the public officer or a government department, public body or other organization or institution or which that public officer is serving as such; or
 - c) Acting on behalf of or relative to such a person, the property benefit or promise shall, unless the contrary is proved, be deemed to have been given corrupt on account of such a past or future act, omission, favour or disfavour as is mentioned in section 13(1) and (2).

14. Corruption demand by persons

Any person who-

- a) Ask for, receives or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of-
 - i. Anything already done or omitted to be done, or any favour or disfavour already shown to any person, by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, public body or other organization or institution in which the public officer is serving as such; or
 - ii. Anything to be afterwards done or omitted or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his

official duties or in relation to any such matters as aforesaid, is guilty of an offence of official corruption and on conviction be liable to imprisonment for seven (7) years.

15. Fraudulent acquisition of property

Any person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than twenty (20) persons, a private interest in any contract, agreement or investment from or connected with the department or office in which he is employed or which is made on account of the public service, is guilty of an offence, and on conviction be liable to imprisonment for seven (7) years.

16. Fraudulent receipt of property

Any person who receives anything which has been obtained by means of any act constituting a felony or misdemeanour, or by means of any act done at a place outside Nigeria, which if it had been done in Nigeria would have constituted a felony or misdemeanour and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a felony.

17. Penalty for offences committed through postal system

If the offence by means of which the thing was obtained is a felony, the offender shall on conviction be liable to imprisonment for three (3) years, except the thing so obtained was postal matter, or any chattel, money or valuable security contained therein, in which case the offender on conviction be liable to imprisonment for seven (7) years

18. Deliberate frustration of investigation by the Commission

Any person who, with intent to defraud or conceal a crime or frustrate the Commission in its investigation of any suspected crime of corruption under this Act or under any other law -

- a) destroys, alters, mutilates, or falsifies any book, document, valuable security, account, computer system, diskette, computer printout or other electronic device which belongs to or is in the possession of his employer, or has been received by him on account of his employment, or any entry in any such book, document, accounts or electronic device, or is privy to any such act; or
- b) makes or is privy to making any false entry in any such book, document, account or electronic record; or
- c) omits, or is privy to omitting, any materials particular from any such book, document, account or electronic record, is guilty of a felony, and on conviction be liable to seven (7) years imprisonment.

19. Making false statement or return

Any person who, being an officer charged with the receipt, custody, use or management of any part of the public revenue or property, knowingly furnishes any false statement or return in respect of any money or property received by him or entrusted to his care or of any balance of money or property in his possession or under his control, is guilty of an offence, and on conviction be liable to seven (7) years imprisonment.

20. Gratification by and through agents

- 1) Any person who corruptly-
 - a) Accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, and gift or consideration as an inducement or reward for doing forbearing to do, or for having done, or forborne to do, any act or thing or;
 - b) Gives or agrees to give to offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do or for having done, or forborne to do act or thing in relation to his principles' affairs or business; or
 - c) Knowingly give to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principle is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person, is guilty of an offence, and of on conviction be liable to five (5) years imprisonment or a fine of not less than ₦200,000.00.
- 2) For the purposes of this section, the expression "consideration includes valuable consideration of any kind; the expression "agent" include any person employed by or acting for another, and the expression "principal" includes an employer.

21. Bribery of public officer

Any person who offers to any public officer, or being or public officer solicits, counsels or accepts an gratification as an inducement or a review for-

- a) Voting or abstaining from voting at any meeting of the public body in favour or against any measure, resolution or question submitted to the public body;
- b) Performing or abstaining from performing or aiding in procuring expediting, delaying hindering or preventing the performance of any official act;
- c) Aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person; or
- d) Showing or forbearing to show any favour or disfavour in his capacity as such officer, shall, notwithstanding that the officer did not have the power, right or opportunity so to do, or that the inducement or reward was not in relation to

the affairs of the public body, is guilty of an offence and on conviction be liable to five (5) years imprisonment with hard labour.

22. Using office or position for gratification

Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public of an offence and on conviction be liable to imprisonment for five (5) years without option of fine.

23. Forfeiture of gratification and other penalties

Without prejudice to any sentence of imprisonment imposed under this Act, a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum or value of the gratification which is the subject-matter of the offence where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand naira, whichever is higher.

24. Bribery in relation to auction

- 1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, is guilty of an offence.
- 2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantages as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, is guilty of an offence.
- 3) Any person guilty of an offence under this section, on conviction of the indictment, be liable to a fine of the current price of the property and imprisonment for three (3) years.

25. Bribery for giving assistance, etc., in regard to contracts

- 1) Any person who, without lawful authority or reasonable excuse offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-
 - a) The promotion, executing and procuring of-
 - i. Any contract with a public body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or
 - ii. Any sub-contract to perform any work, provide any article, materials or substance required to be performed, provided, done or supplied under any contract with a public body; or

- b) The payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid is guilty of offence.
- 2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in
 - a) The promotion, execution or procuring; or
 - b) The payment of the price, consideration; or
 - c) Other moneys stipulated or otherwise provided for in, an contract, or sub-contract as it referred to in sub-section (1) is guilty of an offence.
- 3) Any public officer who in the course of his official duties, inflates the price of any goods or service above the prevailing market price or professional standards is guilty of an offence under this Act and liable on conviction to imprisonment for a term of seven (7) years and a fine of one million naira.
- 4) Any person or public officer who commits an offence under subsection (1) and (2) of this section shall on conviction be liable to a term of imprisonment for seven (7) years or a fine of one million naira.

26. Duty to report bribery transactions

- 1) Any public officer to whom any gratification is given, promised, or offered in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or police officer.
- 2) Any person from whom any gratification has been solicited or obtained, or from whom an attempt has been made to obtain such gratification, in contravention of any provision of this Act, shall, at the earliest opportunity thereafter, report such soliciting or obtaining, or attempt to obtain the gratification together with the name, if known, or a true and full description of the person who solicited, or obtained, or attempted to obtain the gratification from him, to the nearest officer or officer of the Commission or a police officer.
- 3) Any person who fails without reasonable excuse, to comply with subsections (1) and (2) is guilty of an offence and on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

27. Dealing with using, holding, receiving or concealing gratification

Any person who, whether within or outside Nigeria, whether directly or indirectly, whether on behalf of himself or on behalf of any other person,

enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject-matter of an offence under sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 is guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding five (5) years.

28. Making false or misleading statement to the Commission

- 1) Any person who makes or causes any other person to make an officer of the Commission or to any public officer, in the course of the exercise by such public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-
 - a) is false, or intended to mislead or is untrue in any material particular; or
 - b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under legal or other obligation to tell the truth, is guilty of an offence and on conviction be liable to imprisonment for a term not exceeding seven (7) years.

29. Attempts, Conspiracies, Abetments, Punishable as Offence

- 1) Any person who-
 - a) Attempts to commits any offence under this Act;
 - b) Does any act preparatory to or in furtherance of the commission of an offence under this Act;
 - c) Abets or is engaged in a criminal conspiracy to commit any offence under this act; or
 - d) Vomits any offence under this Act, is guilty of an offence and on conviction, be liable to the punishment provided for such offences.

30. Delegation of Attorney-General's Power to Prosecute

Prosecution for an offence under this Act shall be initiated in the name of Attorney-General of the Federation or of a State as the case may be, and where such offence is provided for under any other Act prohibiting bribery, corruption, fraud or any other related offences, the procedure and penalty under such Act shall be adopted.

31. Power to Investigate Reports and Enquire into Information

- 1) Every report relating to the Commission of an offence under the Act may be made orally or in writing to an officer of the Commission, and made orally shall be reduced into writing and read over to the person making the report; and shall be reduced into writing and read over to the person making the report; and every such report shall be signed or thumb-printed by the person

making it and where the person making the report is an illiterate, the officer obtaining the report shall endorse the fact on the report together with a statement to the effect that it was read over the interpretation to the maker.

- 2) Every report, whether in writing or reduced into writing, shall entered in a book kept at the office of the Commission and there shall appended such entry the date and hour at which such report was made.
- 3) Any document certified by an officer of the Commission under sub-section (2) in respect of a report under sub-section (1), shall be admissible as evidence of the contents of the original and of the time, place and manner in which the report was recorded.

32. Power to examine persons

An officer of the Commission investigating an offence under this Act may comply with the provisions of the Police Act, and or any other Act regulating the obtaining of statements, investigating and evidence.

[L.F.N. 2004 Cap. P19.]

33. Summons against suspects

Subject to the provisions of sections 34 to 38 of this Act, the Commission may issue a summons directed to a person complained against or any other person to attend before the Commission for the purpose of being examined in relation to the complaint or in relation to any other matter which may aid or facilitate the investigation of the complaint and a summons so issued shall state the substance of the complaint, the time and place at which the inquiry is to be held, the substance of the complaint and a copy of the complaint thereof shall be handed over to the person against whom the complaint is directed.

34. Forms and service of summons

Every summons issued by the Commission under this Act shall be in duplicate and signed by the Chairman or such officer as the Chairman may authorize to issue summons.

35. Service of summons

Every summons under this Act shall be served by an officer of the Commission in the manner prescribed in the Sheriffs and Civil Process Act and any other laws relating to the service of process and the person effecting the service shall have and exercise all the powers conferred by the law and any other law relating to the service of process.

[L.F.N. 2004 Cap. 56.]

36. Substituted service

Where the person summoned by the Commission is in the service of government, the Commission may deliver the summons in duplicate to the head of the department in which such person is employed for the purpose of its being

served on that person and such officer shall thereupon cause the summons to be served on that person.

37. Acknowledgment of Service

Where a summons has been served upon to whom it is addressed or is delivered to any other person, the person to whom it is addressed or delivered as the case may be, shall sign a receipt therefore on the duplicate and where service is not effected by handing summons to an individual but by some other method approved by this Act, the person effecting service shall endorse on the duplicate particulars of the method by which the service was effected.

38. Detention of Person Refusing to Acknowledge Service

A person required to sign a receipt on the back of the duplicate summons to the effect that he has received the summons who refuses to do so may be arrested by the person serving the summons and is guilty of an offence and on conviction be liable to one month imprisonment or five thousand naira option of fine.

39. Offence Under Act to Be Seizable Offence and Bailable, etc.

- 1) Every offence under this Act shall be bailable offence for the purpose of the Criminal Procedure Act, criminal Code Act, Criminal Procedure Code Act or Penal Code Act.
- 2) Every person arrested under subsection (1) may be released from custody on his executing a bond with sureties, as an officer of the Commission may require.
- 3) Any person who was released from custody under subsection (2) may be rearrested without warrant by an officer of the Commission.
 - a) If such officer has reasonable grounds for believing that may release or otherwise admitted to bail has been broken or is likely to break any condition on or subject to which such person was released; or
 - b) On being notified in writing by the surety or securities of such person that such person has broken or is likely to break any condition on or subject to which such person was released and the surety wishes to be relieved of his obligation as surety.
- 4) Any person arrested under subsection (3) who is not released on bail shall, without unreasonable delay, and in any case within twenty-four hours (excluding the time for an unnecessary journey) be produced before the Court and if it appears to the Court that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the Court may-
 - a) Remand such person in custody; or

- b) Admit such person to bail on the same conditions or on such other conditions as it thinks fit.
- 5) Where a person who is arrested for an offence under this Act is serving a sentence of Imprisonment or is in detention under any law relating to preventive detention, or is otherwise in lawful custody, he shall, upon an order in writing by an officer of the Commission be produced before such officer or before any other officer of the Commission for the purpose of investigation and for such purpose he may be kept in lawful custody for a period not exceeding fourteen days.
- 6) A person who is detained in lawful custody under subsection (5) or otherwise under any other written law may, at any time, be made available to an officer of the Commission for the purpose of investigation, or may be taken to any other place for the purpose of searching the place, or seizing any property, or identifying any person or for any other purpose related to the investigation.
- 7) The period during which a person is under lawful custody under subsection (6) shall count towards the period of his imprisonment, detention or other custody.

40. Prohibition of dealing with property outside Nigeria

Where the Commission has evidence that any property is the subject-matter of an offence under this Act or was used in the commission of the offence, and such property is held or deposited outside Nigeria, the Commission may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

41. Forfeiture of property upon prosecution for an offence

- 1) In any prosecution for an offence under this Act, the Court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or have been used in the commission of the offence where –
 - a) the offence is proved against the accused; or
 - b) that the accused is not the true and lawful owner of such property; or
 - c) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.
- 2) Where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced the Court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the Court, the value of the gratification received by the accused, and any such penalty shall be recovered as a fine.

42. Independent Counsel to Investigate President, etc.

- 1) When an allegation of corruption or anything purporting contravene any provision of this Act is made against the President or the Vice-President of Nigeria or against any State Governor or Deputy Governor, the Chief Justice of Nigeria shall, if satisfied that sufficient cause has been shown upon an application on notice supported by an affidavit setting out the fact on which the allegation is based, authorized an independent counsel (who shall be a legal practitioner of not less than fifteen years standing) to investigate the allegation and make a report of his findings to the National Assembly in the case of the President or Vice-President and to the relevant State House of Assembly in the case of the State Governor or Deputy Governor.
- 2) The Commission shall be enjoined to full co-operate with such independence counsel and provide all facilities necessary for such independence counsel to carry out its functions.

43. Presumption in Certain Offences, etc.

- 1) Where in the proceedings against any person for an offence under section 13 to 23, it is proved that any gratification had been accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be solicited or given, promised or offered, by or to the accused the gratification shall be presumed to have been corruptly accepted or agreed to be accepted, obtained or attempted to be obtained, solicited given agreed to be solicited or given, promised or offered as an inducement or reward for an account for the matter set out in the particulars of the offence until the contrary is proved.
- 2) Where in any proceedings against any person for an offence under this Act or any other law prohibiting corruption, it is proved that such person has accepted or agreed to accept, obtained or attempted to obtain any gratification, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offence, until the contrary is proved.
- 3) Where in any proceedings against any person for an offence under this Act or any other law prohibiting corruption, it is proved that such person has accepted or attempted to obtain any valuable thing without consideration or for a consideration which he knows to be inadequate, such person shall be presumed to have done so with knowledge as to the circumstances set out in the particulars of the offence, until the contrary is proved.
- 4) Where in any proceedings against any person for an offence under the Custom and Excise Management Act, it is proved that any officer of customs or other person duly employed for the prevention of smuggling has accepted, agreed to accept or attempted to obtain any bribe, gratuity, recompense, or reward, such

officer or person shall be presumed to have done so for such neglect or non-performance of his duty as set out in the particulars of offence, until the contrary is proved.

[L.F.N. 2004 Cap. C45.)

44. Public evidence of corroboration

In any proceedings against any person for an offence under sections 13 to 23 of this Act, it may be proved that at or about the time of the alleged offence, or at any time thereafter the accused, or any relative or associate of his -

- a) held any property for which he, or his relative or associate, as the case may be, is unable to give a satisfactory account as to how he came to its ownership, possession, custody or control; or
- b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it was or is agreed to be acquired, the evidence in relation thereof shall be presumed to corroborate any evidence relating to the commission of the offence.

45. Presumption in favour of admissibility of certificate issued by principal or employer, etc.

- 1) A certificate issued by a principal or an officer on behalf of his principal shall be admissible in evidence in any proceedings against any person for any offence under this Act as Prima facie proof that the person named in

such certificate –

- a) Held the position, office or capacity specified in such certificate and for such period so specified; and
- b) Received the emoluments specified in such certificate.
- 2) A certificate issued under subsection (1) shall be prima facie proof that it was issued by the person purporting to issue it as principal or on behalf of the principal without proof of the signature of the person who issued certificate and without proof of the authority of such person to issue it in the absence of any reasonable proof to the contrary.

46. Joinder of Offences

Subject to the provisions of any other Act or law where a person accused of more than one offence under this act, he may be charged, with and tried at one trial for any number of such offences committed within space if any length of time.

47. Certificate of Indemnity in Favour of Full Disclosure

- 1) Every person required to give evidence under this Act who, in the opinion of the Court, makes a true and full disclosure of all things to which is lawfully examined, shall be entitled to receive a certificate of indemnity under the seal of the Court stating that he made a true and full disclosure of all things on

which he was examined, and such certificate shall be a bar any legal proceedings against him in respect of any such things.

- 2) An application by the Chairman under subsection (1) may be presented to the Court by the Officer conducting the prosecution.

48. Protection of Informers and Information

- 1) Subject (2) where any complaint made by any officer of the Commission states that the complainant and the identity of the person from whom the information is received shall be secret between the officer who made such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information all other circumstances relating to the information, including the place disclosed in public but only to the trial judge and the defence lawyer attendance in any civil, criminal or other proceedings in any court tribunal.
- 2) Any person who gives the information referred to in subsection (1) knowing the information to be false is guilty of an offence and on conviction be liable to imprisonment for a term not exceeding ten years, or fine not exceeding one hundred thousand naira.

49. Protection of officers of the Commission

No legal proceedings, civil or criminal, shall be instituted against any officer of the Commission or any other person assisting such officer for any act which is done in good faith or for any omission in good faith by such officer or other person.

50. Liability for offences outside Nigeria

- 1) The provisions of this Act shall, in relation to citizens and persons granted permanent residence in Nigeria, have effect outside as well as within Nigeria, and when an offence under this Act is committed in any place outside Nigeria by any citizen or persons granted permanent residence in Nigeria, he may be dealt with in respect of such offence as if it was committed at any place in Nigeria.
- 2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Nigeria shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence, outside Nigeria.
- 3) The Commission shall have the power to engage the service of INTERPOL or such local or international institution, body or persons possessing special knowledge or skill on the tracing of properties or on of cross border crimes.

51. Application of provisions of this Act to any prescribed offence

Where any provision of this Act is similar or contrary in any material particular to the provisions of any other Act, the provision of that other Act with respect to investigation, prosecution and penalty shall prevail.

52. General penalty for other offences

Any person convicted for an offence under this Act for which no penalty is specifically provided is liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding six months or both.

53. Powers of police officers under this Act.

Nothing contained in this Act shall derogate from the powers of a police officer to investigate any offence under this Act or to prosecute any person in respect of any such offence provided that the Police shall bring to the attention of the Commission every case of bribery, corruption or fraud being investigated or prosecuted by them after the coming into force of this Act.

54. Right of Appeal

A person convicted for an offence under this Act or any other law prohibiting bribery or corruption shall have and exercise any or all such rights of appeal as conferred by the Constitution of the Federation Republic of Nigeria in case.

55. Repeal of Act No. 5 of 2000

The corrupt Practices and Other Related Offences Act, 2000 is repealed

56. Appointment under the Corrupt Practices and Other Related Offences Act, 2000

Any appointment made under Corrupt Practice and other Related Offences Act, 2000 terminated at the commencement of this Act.

Chapter 22

Money Laundering (Prohibition) Act, 2011

ARRANGEMENT OF SECTIONS

PART I - PROHIBITION OF MONEY LAUNDERING

1. Limitation to make or accept cash payment.
2. Duty to report international transfer of funds and securities.
3. Identification of customers.
4. Duties incumbent upon casinos.
5. Occasional cash transaction by designated non-financial institutions.
6. Special surveillance on certain transactions.
7. Preservation of records.
8. Communication of information.
9. Arousing awareness among employees of financial institutions.
10. Mandatory disclosure by financial institution.
11. Prohibition of numbered or anonymous accounts.
12. Liability of Directors, etc. of financial institutions
13. Surveillance of bank accounts.
14. Determination of flow of transactions.

PART II - OFFENCES

15. Money laundering offences.
16. Other offences.
17. Retention of proceeds of a criminal conduct.
18. Conspiracy, aiding and abetting.
19. Offences by a body corporate.

PART III - MISCELLANEOUS

20. Trial of offences.
21. Power to demand and obtain records.
22. Obstruction of the Commission or authorised officers.
23. Repeal of section 13 Cap N30 LFN 2004.
24. Repeal of the Money Laundering (Prohibition) Act, 2004.
25. Interpretation.
26. Citation.

MONEY LAUNDERING (PROHIBITION) ACT, 2011

An Act to repeal the Money Laundering (Prohibition) Act, 2004 and enact the Money Laundering (Prohibition) Act, 2011; and for related matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I - PROHIBITION OF MONEY LAUNDERING

1. No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding -
 - a) ~~₦~~5,000,000.00 or its equivalent, in the case of an individual; or
 - b) ~~₦~~10,000,000.00 or its equivalent in the case of a body corporate.
2. (1) A transfer to or from a foreign country of funds or securities by a person or body corporate including a Money Service Business of a sum exceeding US\$10,000 or its equivalent shall be reported to the Central Bank of Nigeria, Securities Exchange Commission or the Commission in writing within 7 days from the date of the transaction.
- 2) A report made under subsection (1) of this section shall indicate the nature and amount of the transfer, the names and addresses of the sender and the receiver of the funds or securities.
- 3) Transportation of cash or negotiable instruments in excess of US\$10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigerian Customs Service.
- 4) The Nigerian Customs Service shall report any declaration made pursuant to subsection (3) of this section to the Central Bank and the Commission.
- 5) Any person who falsely declares or fails to make a declaration to the Nigerian Customs Service pursuant to section 12 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, commits an offence and shall be liable on conviction to forfeit not less than 25% of the undeclared funds or negotiable instrument or to imprisonment of not less than 2 years or to both.
3. (1) A Financial Institution and a Designated Non-Financial Institution shall -
 - a) verify its customer's identity and update all relevant information on the customer -
 - (i) before opening an account for, issuing a passbook to, entering into fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer, and
 - (ii) during the course of the relationship with the customer;
 - b) scrutinize all on-going transactions undertaken throughout the duration of the relationship in order to ensure that the customer's transaction is consistent with the business and risk profile.
- 1) An individual shall be required to provide proof of his -

- a) identity, by presenting to the Financial Institution or Designated Non-Financial Institution a valid original copy of an official document bearing his names and photograph or any other identification documents as the relevant regulators may from time to time approve;
- b) address, by presenting to the Financial Institution or Designated Non-Financial Institution the originals of receipts issued within the previous 3 months by public utilities or any other documents as the relevant regulatory authorities may from time to time approve;
- 2) A body corporate shall be required to provide proof of its identity by presenting its certificate of incorporation and other valid official documents attesting to the existence of the body corporate.
- 3) The Manager, employee or assignee delegated by a body corporate to open an account shall be required to produce not only the documents specified in subsection (2) of this section, but also proof of the power of attorney granted to him in that behalf.
- 4) A casual customer shall comply with the provisions of subsection (2) of this section for any number or manner of transactions including wire transfer involving a sum exceeding US \$1,000 or its equivalent if the total amount is known at the commencement of the transaction or as soon as it is known to exceed the sum of US \$1,000 or its equivalent.
- 5) Where a Financial Institution or Designated Non-Financial Institution suspects or has reasonable grounds to suspect that the amount involved in a transaction is the proceeds of a crime or an illegal act it shall require identification of the customer notwithstanding that the amount involved in the transaction is less than US\$11,000 or its equivalent.
- 6) If it appears that a customers may not be acting on his own account, the Financial Institution or Designated Non-Financial Institution shall seek from the customer by all reasonable means, information as to the true identity of the principal and where the customer is a body corporate, the Financial Institution or Designated Non-Financial Institution shall -
 - a) take reasonable measures to understand the ownership and control structure of the customer; and
 - b) determine the natural persons who truly own or control the customer.
- 7) Where the customer is a Public Officer, the Financial Institution or Designated Non-Financial Institution shall in addition to the requirements of subsection (1) and (2) of this Section -
 - a) put in place, appropriate risk management systems; and
 - b) obtain senior management approval before establishing and during any business relationship with the Public Officer.

4. (1) A casino shall -

- a) verify the identity of its customers carrying out financial transactions by requiring the customer to present a valid original document bearing his name and address;
- b) record of all transactions under this section in chronological order including -
 - (i) the nature and amount involved in each transaction; and
 - (ii) each customer's surname, forenames and address in a register forwarded to the Ministry for that purpose.

1) A register kept under subsection (1) (b) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.

5.(1) A Designated Non-Financial Institution whose business involves the one of cash transaction shall –

- a) In the case of-
 - (i) a new business, before commencement of the business,
 - (ii) existing business, within 3 months from the commencement of this Act, submit to the Ministry a declaration of its activities.
 - b) prior to any transaction involving a sum exceeding US\$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving licence, national identity card or such other document bearing his photograph as may be prescribed by the Ministry;
 - c) record all transaction under this section in chronological order, indicating each customers surname, forenames and address in a register numbered and forwarded to the Ministry.
- 2) The Ministry shall forward the information received pursuant to subsection (1) of this section to the Commission within 7 days of its receipt.
- 3) A register kept under subsection (1) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.
- 4) The Minister may make regulations for guiding the operations of Designated Non-Financial Institutions under this section.
- 5) Notwithstanding the provisions of subsection (2) of this section, the Commission shall have powers to demand and receive reports directly from Designated Non-Financial Institutions.
- 6) A Designated Non-Financial Institution that fails to comply with the requirements of customer identification and the submission of returns on such transaction as specified in the Act within 7 days from the date of the transaction commits an offence and is liable on conviction to -
- a) a fine of ₦250,000.00 for each day during which the offence continues; and
 - b) suspension, revocation or withdrawal of licence by the appropriate licensing authority as the circumstances may demand.

6. (1) Where a transaction -
- a) involves a frequency which is unjustifiable or unreasonable;
 - b) is surrounded by conditions of unusual or unjustified complexity;
 - c) appears to have no economic justification or lawful objective; or
 - d) in the opinion of the Financial Institution or Designated Non-Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious and the Financial Institution involved in such transaction shall seek information from the customer as to the origin and destination of the fund, the aim of the transaction and the identity of the beneficiary.
- 2) A Financial Institution or Designated Non-Financial Institution shall within 7 days after the transaction referred to in subsection (1) of this section -
- a) draw up a written report containing all relevant information on the matters mentioned in subsection (1) of this section together with the identity of the principal and where applicable, of the beneficiary or beneficiaries;
 - b) take appropriate action to prevent the laundering of the proceeds of a crime or an illegal act; and
 - c) send a copy of the report and action taken to the Commission.
- 3) The provisions of subsections (1) and (2) of this section shall apply whether the transaction is completed or not.
- 4) The Commission shall acknowledge receipt of any disclosure, report or information received under this section and may demand such additional information as it may deem necessary.
- 5)(a) The acknowledgement of receipt shall be sent to the Financial Institution or Designated Non- Financial Institution within the time allowed for the transaction to be undertaken and it may be accompanied by a notice deferring the transaction for a period not exceeding 72 hours.
- (b) Notwithstanding the provisions of paragraph (a) of this subsection, the Chairman of the Commission, the Governor of the Central Bank or their authorised representative shall place a Stop Order not exceeding 72 hours, on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime.
- 6) If the acknowledgement of receipt is not accompanied by a stop notice, or where the stop notice has expired and the order specified in subsection (6) of this section to block the transaction has not reached the Financial Institution or Designated Non-Financial Institution, it may carry out the transaction.
- 7) Where it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction, The Federal High Court may, at the request of the

commission, or others persons of authority duly authorised in that behalf, order that that the funds, accounts or securities referred to in the report be blocked.

- 8) An order made by the Federal High Court under subsection (7) of this section shall be enforced forthwith.
- 9) A financial institution or Designated Non-Financial Institution which fails to comply with the provisions of subsection (1) and (2) of this section commits an offence and is liable on conviction to a fine of ₦1,000,000 for each day during which the offence continues.
- 10) The directors, officers and employees of Financial Institutions and Designated Non-Financial Institutions who carry out their duties under this Act in good faith shall not be liable to any civil or criminal liability or have any criminal or civil proceedings brought against them by their customers.
7. A Financial Institution and Designated Non-Financial Institution shall preserve and keep at the disposal of the authorities specified in section 8 of this Act -
 - a) the record of a customer's identification for a period of at least 5 years after the closure of the account or the severance of relations with the customer; and
 - b) the record and the other related information of a transaction carried out by a customer and the report provided for in section 6 of this Act shall be preserved, for a period of at least 5 years after carrying out the transaction or making of the report as the case may be.
8. The records referred to in section 7 of this Act shall be communicated on demand to the Central Bank of Nigeria, or the National Drug Law Enforcement Agency (in this Act referred to as the "Agency") and such other regulatory authorities, judicial persons as the Commission may, from time to time, by order published in the *Gazette*, specify.
- 9.(1) Every Financial Institution and Designated Non-Financial Institution shall develop programmes to combat the laundering of the proceeds of a crime or other illegal act, and these shall include -
 - a) the designation of compliance officers at management level at its headquarters and at every branch and local office;
 - b) regular training programmes for its employees;
 - c) the centralization of the information collected; and
 - d) the establishment of an internal audit unit to ensure compliance with and ensure the effectiveness of the measures taken to enforce the provision of this Act.
- 1) Notwithstanding the provision of this Act, the Central Bank of Nigeria, may impose a penalty of not less than ₦1,000,000.00 or the suspension of any licence issued to the Financial Institution or Designated Non-Financial Institution for failure to comply with the provisions of subsection (1) of this section.

10. (1) Notwithstanding anything to the contrary in any other law or regulation, a Financial Institution or Designated Non-Financial Institution shall report to the Commission in writing within 7 and 30 days respectively any single transaction, lodgement or transfer of funds in excess of -
- a) ₦5,000,000.00 or its equivalent, in the case of an individual; or
 - b) ₦10,000,000.00 or its equivalent in the case of a body corporate.
- 2) A person other than a Financial Institution may voluntarily give information on any transaction, lodgement or transfer of funds in excess of -
- a) ₦1,000,000.00 or its equivalent, in the case of an individual; or
 - b) ₦5,000,000.00 or its equivalent, in the case of a body corporate.
- 3) Any Financial Institution or Designated Non-Financial Institution that contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₦250,000 and not more than ₦1,000,000 for each day the contravention continues.
- 11.(1) The opening or maintaining of numbered or anonymous accounts by any person, Financial Institution or corporate body is prohibited.
- 1) Any person, Financial Institution or corporate body that contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to -
- a) in the case of an individual, a term of imprisonment of not less than 5 years;
 - b) in the case of a Financial Institution or corporate body, a fine of not less than ₦10 million but not more than ₦50 million.
12. Where funds are blocked under subsection 7 of section 6 of this Act and there is evidence of conspiracy with the owner of the funds, the Financial Institution or the Designated Non-Financial Institution involved shall not be relieved of liability under this Act and criminal proceedings for all offences arising there from, may be brought against its director and employees involved in the conspiracy.
13. (1) The Commission, Agency, Central Bank of Nigeria or other regulatory authorities pursuant to an order of the Federal High Court obtained upon an ex-parte application supported by sworn declaration made by the Chairman of the Commission or an authorised officer of the Central Bank of Nigeria or other regulatory authorities justifying the request, may in order to identify and locate proceeds, properties, objects or other things related to the commission of an offence under this Act, the Economic and Financial Crimes Commission (Establishment) Act or any other law -
- a) place any bank account or any other account comparable to a bank account under surveillance;
 - b) obtain access to any suspected computer system;

- c) obtain communication of any authentic instrument or private contract, together with all bank, financial and commercial records, when the account, telephone line or computer system is used by any person suspected of taking part in a transaction involving the proceeds, of a financial or other crime.
- 2) The Agency may exercise the powers conferred under subsection (1) of this section where it relates to identifying or locating properties, objects or proceeds of narcotic drugs or psychotropic substances.
- 3) In exercising the power conferred under subsection (2) of this section, the Agency shall promptly make a report to the Commission.
- 4) Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in subsection (1) and (2) of this section or for refusing to be a witness to facts likely to constitute an offence under this Act, the Economic and Financial Crimes Commission (Establishment, Etc.) Act or any other law.
- 14. The Commission shall in consultation with the Central Bank and the Corporate Affairs Commission determine the flow of transaction and the identities of beneficiaries under this Act including the beneficiaries of individual accounts and of corporate accounts.

PART II – OFFENCES

15. (1) Any person who –

- a) converts or transfers resources or properties derived directly from –
 - (i) illicit traffic in narcotic drugs and psychotropic substances, or
 - (ii) participation in an organised criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants smuggling, tax evasion, sexual exploitation, illicit arms trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints and hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Act or any other legislation in Nigeria relating to money laundering, illegal bunkering, illegal mining, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action;
- b) collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or right thereto derived directly or indirectly from the acts specified in paragraph (a) of this subsection commits an offence under this section and is liable on conviction to imprisonment for a term not less than 5 years but not more than 10 years.

- 1) A person who commits an offence under subsection (1) of this section, shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or places.
16. (1) Without prejudice to the penalties provided under section 15 of this Act, an person who –
 - a) being a director or employee of a Financial Institution warns or in any other way intimates the owner of the funds involved in the transaction referred to in section 6 of this Act about the report he is required to make or the action taken on it or who refrains from making the report as required;
 - b) destroys or removes a register or record required to be kept under this Act;
 - c) carries out or attempts under a false identity to carry out any of the transactions specified in sections 1 to 5 of this Act; or
 - d) makes or accepts cash payments exceeding the amount authorised under this Act;
 - e) fails to report an international transfer of funds or securities required to be reported under this Act; or
 - f) being a director or an employee of a Financial Institution or Designated Non-Financial Institution contravenes the provisions of sections 2, 3, 4, 5, 6 or 7 of this Act, commits an offence.
- 2) A person who commits an offence under subsection (1) of this section shall be liable on conviction –
 - a) in the case of an offence under paragraphs (a) to (c), of subsection (1) to imprisonment for a term of not less than 2 years but not more than 3 years or to a fine of ₦500,00 and not more than ₦1,000,000;
 - b) in the case of an offence under paragraph (d), a forfeiture of 25% of the excess above the limits placed in section 1 of this Act;
 - c) in the case of an offence under paragraphs (c) and (f) where the offender –
 - (i) is an individual, a fine of not less than ₦1,000,000 or not more than ₦3,000,000 or a term of imprisonment of not less than 2 years or not more than 3 years or to both; and
 - (ii) is a financial institution or anybody corporate to a fine of not less than ₦3,000,000 or more than ₦25,000,000
- 3) A person found guilty of an offence under this section may also be banned indefinitely or for a period of 5 years from practicing the profession, which provided the opportunity for the offence to be committed.
- 4) Where as a result of a serious oversight or a flaw in its internal control procedures, a Financial Institution or a person designated under subsection (1) (a) of section 9 of this Act, fails to meet any of the obligations imposed by this

Act, the disciplinary authority responsible for the Financial Institution or the person's professional body may, in addition to any penalty in this Act take such disciplinary action against the Financial Institution or persons as is in conformity with its professional and administrative regulations.

17. A person who -

- a) conceals, removes from jurisdiction, transfers to nominees or otherwise retains the proceeds of a crime or an illegal act on behalf of another person knowing or suspecting that other person to be engaged in a criminal conduct or has benefited from a criminal conduct, or conspiracy, aiding, etc.; and
- b) knowing that any property either in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or possession of it, commits offence under this Act and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine.

18. A person who -

- a) conspires with, aids, abets or counsels any other person to commit an offence;
- b) attempts to commit or is an accessory to an act or offence; or
- c) incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act, commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

19. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary, or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate where applicable shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- 1) Where a body corporate is convicted of an offence under this Act, the court may order that the body corporate shall thereupon and without any further assurances, but for such order, be wound up and all its assets and properties forfeited to the Federal Government.

PART III - MISCELLANEOUS

20.(1) The Federal High Court shall have exclusive jurisdiction to try offences under this Act.

- 2) In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known source of income, or that

he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources of property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Federal High Court as corroborating the testimony of any witness in such trial.

21. For the purpose of this Act, the Director of Investigation or an officer of the Ministry, Commission or Agency duly authorised in that behalf may demand, obtain and inspect the books and records of the Financial Institution or Designated Non-Financial Institution to confirm compliance with the provision of this Act.
22. A person who wilfully obstructs the officers of the Ministry, the Commission, the Agency or any authorised officer in the exercise of the powers conferred on the Ministry, the Commission, or the Agency by this Act commits an offence and is liable on conviction –
 - a) in the case of an individual, to imprisonment for a term not less than 2 years and not exceeding 3 years; and
 - b) in the case of a financial institution or other body corporate, to a fine of ₦1,000,000.
23. Section 13 of the National Drug Law Enforcement Agency Act is repealed.
 - 1) The Money Laundering (Prohibition) Act 2004 is repealed.
 - 2) The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to be done under or pursuant to that enactment.
24. In this Act –
 - “Agency” means National Drug Law Enforcement Agency;
 - “Central Bank” means the Central Bank of Nigeria
 - “Commission” means the Economic and Financial Crimes Commission;
 - “Designated Non-Financial Institution” means dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets, or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate;
 - “Financial Institution” means banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorization and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing export finance, project consultancy, financial consultancy, pension funds management and such other

business as the Central Bank, or other appropriate regulatory authorities may from time to time designate;

“Other Regulatory Authorities” means the Securities and Exchange Commission and the National Insurance Commission;

“Ministry” means the Federal Ministry of Commerce and “Minister” means the Minister charged with responsibility for matters pertaining to commerce;

“Money Service Business” includes currency dealers; money transmitters; cheque cashers; and issuers of travellers’ cheques, money order, or stored value;

“Public Officers” means individuals who are or have been entrusted with prominent public function, both within and outside Nigeria and those associated with them;

“Terrorism Financing” is the financial support, in any form, terrorism or of those who encourage, plan, or engage in terrorism;

“Transaction” means -

- a) acceptance of deposit and other repayable funds from the public;
- b) lending;
- c) financial leasing;
- d) money transmission service;
- e) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers’ cheque and bankers’ drafts, etc.)
- f) financial guarantees and commitment;
- g) trading for account of customer (spot-forward, swaps, future options, etc.) in –
 - (i) money market instruments (cheques, bills CDs, etc.),
 - (ii) foreign exchange,
 - (iii) exchange interest rate and index instruments,
 - (iv) transferable securities, and
 - (v) commodity futures trading;
- h) participation in capital markets activities and the provision of financial services related to such issues;
- i) individual and collective portfolio management;
- j) safekeeping and administration of cash or liquid securities on behalf of clients;
- k) insurance and all other insurance related matters; and
- l) money changing.

26. This Act may be cited as the Money Laundering (Prohibition) Act.

Local Loans (Registered Stock and Securities) Act

ARRANGEMENT OF SECTIONS

PART I

Preliminary

1. Short title.
2. Interpretation.

PART II

Power to raise loans

3. Issue of registered stock, promissory notes and bearer bonds for the purpose of raising authorised loans.
4. Loans to be charged upon revenue.
5. Minister to direct mode of raising loans and other particulars.
6. Central Bank to make necessary arrangements.

PART III

Registered stock

7. Register of stock.
8. Liability of Government in respect of issue of registered stock.
9. Stockholder.
10. Registration of first stockholders.
11. Stock certificates.
12. Transfer of registered stock.
13. Registration of transfers of stock and liens on stock.
14. Closing of register.
15. Register to be conclusive evidence of facts entered therein.

PART IV

Bearer bonds

16. Bearer bonds.
17. Interest coupons.

PART V

Payment of interest and redemption of stock and securities

18. Appropriation of revenue for payment of interest.
19. Payment of interest.
20. Cessation of liability to pay interest.
21. Payments.

PART VI

Sinking funds

22. Appropriation of revenue for sinking fund.
23. Separate sinking fund for each loan.
24. Investment of sinking fund.

SECTION

25. Cessation of contributions to sinking fund.
26. Expenses to be paid out of sinking fund.
27. Deficiency in sinking fund to be a charge upon revenue.

PART VII

Conversion of loans

28. Power of Minister to authorise conversion of loan generally.

29. Arrangements for conversion.

PART VIII

Issue of duplicates and renewals of stock certificates and securities and exchange and consolidation

30. Issue of duplicates and renewals

31. Right of Registrar to compel renewal of securities.

32. Exchange of registered stock and securities

33. Consolidation and subdivision of stock and securities.

34. Indemnity bonds.

35. Immediate discharge in certain cases.

36. Discharge in other cases.

37. Summary procedure in special cases.

PART IX

Miscellaneous

38. Signature of director of operations of the Central Bank may be printed on stock or securities.

39. Notice of trust not receivable save as provided.

40. Exemption from stamp duties.

41. Inspection of register and documents.

42. Power to make regulations.

43. Savings.

LOCAL LOANS (REGISTERED STOCK AND SECURITIES) ACT

An Act to make provision for the creation and issue of registered stock,
Government promissory notes and bearer bonds for the purpose of raising loans
in Nigeria.

[4th July, 1946]

[Commencement.]

PART I

Preliminary

Short title

This Act may be cited as the Local Loans (Registered Stock and Securities) Act.

Interpretation

In this Act, unless the context otherwise requires-

“bearer bond” means a bearer bond issued under the provisions of this Act;

“Central Bank” means the Central Bank of Nigeria;

“register” means the register of stock kept by the Central Bank; [1976 No. 32. 1979 No.63.]

“Minister” means the Minister for the time being charged with responsibility for matters relating to finance;

“registered stock” or “stock” means Nigeria stock issued under the provisions of this Act;

“security” means a bearer bond;

“stockholder” means a person holding registered stock who is entered as the owner thereof in the register.

PART II

Power to raise loans

3. Issue of registered stock, promissory notes and bearer bonds for the purpose of raising authorised loans
 - 1) Whenever by any Act, whether enacted before or after the date on which this Act comes into operation, authority has been or is hereafter given to raise any sum of money by way of loan for any purpose mentioned in that Act, or whenever it is necessary to raise any sum of money for the purpose of repaying any loan raised by the Government under this or any other Act the Minister may, from time to time, raise such sum or any part thereof under the provisions of this Act in anyone or more of the following modes-
 - a) by the creation and issue of registered stock;
 - b) by the issue of securities in the form of Government promissory notes;
 - c) by the issue of securities in the form of bearer bonds.
 - 2) Each issue of registered stock or securities under this Act for the purpose of raising any specified sum of money shall be deemed to be stock or securities issued in respect of a separate loan notwithstanding that the sum of money so raised is part only of a sum of money authorised by any other Act to be raised by way of a loan.
4. Loans to be charged upon revenue
5. The principal moneys and interest represented or secured by any registered stock or securities issued under this Act are hereby charged upon and shall be payable out of the general revenue and assets of Nigeria.
5. Minister to direct mode of raising loans and other particulars
 - 1) The Minister shall, in respect of each loan to be raised under this Act, specify by directions published in the Federal Gazette-
 - a) the sum of money to be raised by that loan;
 - b) the mode or modes of raising the loan;
 - c) the rate of interest payable on the loan;

- d) the dates in each year on which the half-yearly interest on the loan shall be payable;
 - e) the rate of which a half-yearly appropriation out of the general revenue and assets of Nigeria shall be made as a contribution to the sinking fund established for the purpose of redeeming that loan and the date from which such contributions shall commence;
 - f) the date of redemption of the registered stock or securities to be issued for the purpose of raising that loan;
 - g) whether the interest payable on any registered stock, Government promissory notes or bearer bonds issued under the authority of this Act shall be exempt from all or any of the taxes and duties payable under any other enactment in force in Nigeria.
- 2) In the case of a loan appropriated and applied or to be appropriated and applied for lending to the Government of a State such directions shall not require the Government of the Federation to establish a sinking fund but shall specify-
- a) that the terms and conditions for such lending have been approved in accordance with paragraph (b) of section 3 of the Loan (Internal Borrowing) Act; and
 - b) the rate at which a half-yearly appropriation out of the general revenue and assets of each State concerned is required.
- 3) The date of redemption of any registered stock or securities shall not be later than sixty years from the date of issue of such stock or securities.
- 4) Where the Minister deems it expedient to reserve an option to redeem any registered stock or securities at any date earlier than the date of redemption specified for such stock or securities by the directions under subsection (1) of this section, he shall by such directions further specify the terms and conditions on which such stock or securities may be redeemed at any earlier date.
6. Central Bank to make necessary arrangements Upon the publication under section 5 of this Act of the directions of the Minister in respect of any loan to be raised under this Act, the Central Bank may, subject to the provisions of such directions and to such further directions as the Minister may give in that behalf, make all such arrangements as may be necessary to raise that loan upon the most favourable terms that can be obtained.

PART III

Registered stock

7. Register of stock

The Central Bank shall keep a register in respect of each issue of registered stock under this Act in which all such stock and all transfers of and all dealings in such

stock shall be registered and in which shall be entered all matters and things which by this Act are required to be entered in the register.

8. Liability of Government in respect of issue of registered stock

The Government of Nigeria shall be bound to pay to the person registered for the time being as the stockholder, the principal sum represented by that stock and the interest due thereon, in accordance with the provisions of this Act, at the rate and on the dates directed by the Minister under section 5 of this Act or in pursuance of an option to redeem such stock reserved in such directions.

9. Stockholder

For the purposes of this Act, no person shall be entitled to any registered stock unless he is registered as a stockholder in respect thereof.

10. Registration of first stockholders

No person shall be registered as a first stockholder of any registered stock except upon payment in full of the purchase price of that stock.

11. Stock certificates

1) Every stockholder shall be entitled to obtain from the Central Bank a stock certificate and no stockholder, other than the first stockholder of any stock shall be entitled to obtain a stock certificate save upon payment of the prescribed fee.

Transfer of registered stock

2) For the purposes of this Act, the title of any stockholder to any registered stock shall not be deemed to be transferred to any other person save upon the execution of an approved instrument of transfer and upon the registration of the transferee as the stock holder under section 13 of this Act.

3) Interest which has fallen due in respect of any registered stock but which has not been paid to the stockholder for the time being, shall not be deemed to be payable to a transferee of that stock unless the instrument of transfer expressly provides for the payment of that interest to that transferee.

13. Registration of transfers of stock and liens on stock

1) No person shall be registered as the transferee of any registered stock except upon surrender to the Central Bank of the stock certificate and the instrument of transfer relating to that stock and upon payment of the prescribed fee.

2) The Central Bank may register a lien on any registered stock in accordance with such provisions as are prescribed by regulation and upon payment of the prescribed fee.

3) With effect from the 1st day of May 1949, any such lien which is registered under the Act shall have priority over any lien not so registered.

14. Closing of register

The register shall be closed for a period of 21 days immediately preceding each date upon which interest on that stock falls due and no transfer of that stock shall be registered during that period.

15. Register to be conclusive evidence of facts entered therein

- 1) The entries in the register kept under the provisions of this Act shall be conclusive evidence of the facts, matters, particulars and transactions to which those entries relate.
- 2) Notwithstanding the provisions of any other enactment, a copy of any entry in the register certified under the hand of the director of domestic operations of the Central Bank to be a true copy of the original entry shall be receivable in evidence in any judicial proceeding unless a judge shall otherwise direct.

*PART IV**Bearer bonds**16. Bearer bonds*

- 1) Every bearer bond shall be signed by the director of domestic operations of the Central Bank for and on behalf of the Government of Nigeria and shall, when issued, bind the Government of Nigeria to pay the principal sum and the interest thereon in accordance with the provisions of this Act, at the rate and on the dates specified in the directions by the Minister under section 5 of this Act or in pursuance of an option to redeem such bond reserved in such directions.
- 2) Bearer bonds shall be issued in such denominations as the Minister may direct.

17. Interest coupons

- 1) There shall be attached to every bearer bond coupons for the payment of interest which falls due thereunder:

Provided that the number of coupons attached to a bearer bond on the date of its issue to any person may cover a period shorter than that of the currency of the bond if, in the opinion of the Central Bank, it is inconvenient or inexpedient to attach to the bond coupons sufficient in number to cover the entirety of the period of the currency of the bond.

- 2) If the number of coupons attached to any bearer bond on the date of its issue to any person is insufficient to cover all payments of interest due on the bond after that date, the holder of that bond shall be entitled to a renewal thereof at the prescribed time and in the prescribed manner and circumstances.

*PART V**Payment of interest and redemption of stock and securities**18. Appropriation of revenue for payment of interest*

So long as any interest is payable under this Act in respect of any stock or securities, the Minister shall, in each half- year ending with the date on which the interest

on such stock or securities falls due, appropriate out of the general revenue and assets of Nigeria sum sufficient to meet all interest payable on that date and shall authorise the Central Bank to pay such interest out of the sum so appropriated.

19. Payment of interest

- 1) The interest due on any registered stock or securities shall be payable half-yearly on the dates specified by the directions of the Minister under section 5 of this Act.
- 2) Where any amount has become payable on any date as interest due on any registered stock or securities, no interest on that amount shall, after that date, be paid or payable by the Government to any person in any circumstances.

20. Cessation of liability to pay interest

No person shall be entitled to claim interest on any registered stock or securities in respect of any period which has elapsed after the earliest date on which demand could lawfully have been made for the payment of the principal amount due on such stock or securities.

21. Payments

All payments of interest and all payments of the principal amount due on any registered stock or securities shall be made at the Central Bank in Lagos:
Provided that the Central Bank or any person authorised by the Central Bank in that behalf may pay any such interest or principal amount at any other place, whether within or without Nigeria, in pursuance of any arrangement which the Central Bank may make for that purpose.

PART VI

Sinking funds

22. Appropriation of revenue for sinking fund

After the date specified in the directions of the Minister under section 5 of this Act as the date from which contributions to the sinking fund for any loan shall commence, the Minister shall, in each half-year ending with the date specified in those directions for the payment of the half-yearly interest on any stock or securities issued in respect of that loan, appropriate out of the general revenue and assets of Nigeria a sum determined in accordance with the rate specified in those directions as the contribution to the sinking fund established for the purpose of redeeming that loan.

23. Separate sinking fund for each loan

A separate sinking fund shall be established for each loan raised under this Act.

24. Investment of sinking fund

- 1) All moneys appropriated under section 22 of this Act as contributions to the sinking fund established for any loan shall be paid to the Central Bank and may

then be invested in such stock or securities or in such other investments or classes of investments as may be approved by the Minister.

- 2) The Central Bank may from time to time, with the approval of the Minister, vary any investment made under subsection (1) of this section or may realise and reinvest any moneys invested under that subsection.
- 3) The dividends, interest, bonus and other profits of any investment of any part of any sinking fund shall be invested by the Central Bank so as to form part of that sinking funds in like manner as moneys appropriated under section 22 of this Act as contributions to that sinking fund.

25. Cessation of contributions to sinking fund

Notwithstanding anything to the contrary contained in this Act, if at any time the Central Bank is satisfied that the sinking fund of any loan raised under the provisions of this Act will be sufficient with further accumulations of interest, but without further payments of contributions, to enable the loan to be redeemed at the time fixed for its redemption, it shall inform the Minister accordingly, and the Minister is hereby authorised in such event to suspend further payments of half-yearly contributions to that sinking fund:

Provided, however, that the contributions to that sinking fund shall be recommenced if the Central Bank at any time thereafter informs the Minister that it is no longer satisfied that the sinking fund with further accumulations of interest will be sufficient for the redemption of that loan.

26. Expenses to be paid out of sinking fund

There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the investment and management of that fund and the repayment of the loan for which that fund was established.

27. Deficiency in sinking fund to be a charge upon revenue

In the event of the sinking fund established for any loan under this Act being found, at the time fixed for the repayment of that loan, to be insufficient for such redemption, the deficiency shall be made good out of the general revenue and assets of Nigeria.

PART VII

Conversion of loans

28. Power of Minister to authorise conversion of loan generally

The Minister shall have and may from time to time exercise the following powers and authorities or any of them-

- a) he may declare any stock or securities issued in Nigeria under the provisions of this or any other Act to be convertible into registered stock or other securities to be issued under the provisions of this Act;

- b) he may authorise the creation and issue under this Act of such an amount of registered stock or securities as may be necessary for the conversion of the stock or securities in respect of which a declaration has been made under paragraph (a) of this section;
- c) he may authorise the creation and issue under this Act of such registered stock or securities as may be necessary for the purpose of paying any expenses incurred in the creation and issue of registered stock or securities under this section;
- d) he may declare that all privileges, exemptions and immunities attaching by virtue of any enactment in force in Nigeria to any stock or securities shall attach to any new registered stock or securities issued under this Act in conversion of such earlier stock or securities.

29. Arrangements for conversion

Any conversion authorised under section 28 of this Act may be effected either by arrangement with the holders of existing stock or securities, or by purchase thereof out of moneys raised by the sale of stock or securities, or partly in one way and partly in the other.

PART VIII

Issue of duplicates and renewals of stock certificates and securities and exchange and consolidation

30. Issue of duplicates and renewals

- 1) The Central Bank may issue duplicate stock certificates and duplicate securities in such circumstances as may be prescribed.
- 2) The Central Bank may issue renewals of stock certificates and securities in such circumstances as may be prescribed.

30. Right of Registrar to compel renewal of securities

The Central Bank may, in such circumstances as may be prescribed-

- 1) issue a notice to the holder of any security directing him to apply for a renewal of that security; and
- 2) withhold payment of the interest or principal amount due in respect of that security until the application for renewal has been made and determined.

31. Exchange of registered stock and securities

On application made by any person claiming to be the holder of any registered stock or securities issued under this Act, the director of domestic operations of the Central Bank may, if he is satisfied that the applicant is the lawful holder of such stock or securities, and on payment of the prescribed fee, exchange stock for securities or securities for stock or securities of one kind for securities of the other kind:

Provided that-

- a) all stock and securities so given or taken in exchange shall have been issued in respect of the same loan;
- b) the nominal value of the stock or securities given by the Registrar in exchange shall be the same as the nominal value of the stock or securities taken by him in exchange.

32. Consolidation and subdivision of stock and securities

Subject to such conditions as may be prescribed, the Central Bank may-

- a) on the application of a person claiming to be entitled to any stock or securities; and
- b) on being satisfied of the justice of the claim of such applicant; and
- c) on surrender of the stock certificate relating to such stock or of such securities received in the prescribed manner; and
- d) on payment of the prescribed fee, consolidate or subdivide such stock or securities and issue to the applicant one or more new stock certificates or securities as may be required.

33. Indemnity bonds

Where application is made to the Central Bank under this Act for the issue of a duplicate stock certificate or a duplicate security or for the exchange, renewal, consolidation or subdivision of any stock or securities, the Central Bank may require the applicant, as a condition precedent to the grant of the application, to execute a bond with or without sureties undertaking to indemnify the Government against the claims of all persons claiming under the original stock certificate or security or under the stock or securities so exchanged, renewed, consolidated or subdivided, as the case may be.

34. Immediate discharge in certain cases

On payment by or on behalf of the Government to the holder of a bearer bond of the amount expressed therein on or after the date when it becomes due or on the renewal of a bearer bond under section 30 of this Act, or on the exchange of a bearer bond under section 32 of this Act, or on the consolidation or subdivision of a bearer bond under section 33 of this Act, the Government shall be discharged in the same way and to the same extent as if such bearer bond were payable to bearer.

35. Discharge in other cases

Save as otherwise provided in this Act the liability of the Government shall-

- a) in respect of any registered stock or security redeemed on or after the date on which payment of the principal amount becomes due, be discharged after the lapse of six years from that date;
- b) in respect of any security in place of which a duplicate is issued under section 30 of this Act, be discharged after the lapse of six years from the date of the issue of

such duplicate or from the date of the last payment of interest on such security, whichever date is the later;

- c) in respect of a security for which a renewed security is issued under section 30 of this Act, or in respect of stock or securities in place of which new stock or securities are issued upon an exchange under section 32 of this Act, or upon a consolidation or subdivision under section 33 of this Act, be discharged after the lapse of six years from the date of the issue of the renewed security or of the new stock or securities, as the case may be.

36. Summary procedure in special cases

- 1) If within six months of the death of a person who was entitled to registered stock, the nominal or face value of which does not in the aggregate exceed five hundred naira, probate of the will or letters of administration of the estate of such person is not produced to the director of domestic operations of the Central Bank, he may, after such inquiry as he may deem necessary, determine who is the person entitled to such stock or to administer the estate of the deceased and may-
 - a) where any such stock relates to a loan due for repayment, authorise the registration of the name of such person in substitution for the name of the deceased in the register of stock and the payment to such person of the amount due in respect of that stock;
 - b) where any such stock relates to a loan not due for repayment, authorize the registration of the name of such person in substitution for the name of the deceased.
- 2) Upon the payment or renewal of any promissory note in accordance with subsection (1) of this section, the Government shall be discharged from all liability in respect of the note so paid or renewed; and any substitution of names made under that subsection shall, for the purposes of any claim against the Government, be deemed to have effected a valid transfer of the stock in respect of which it was made.
- 3) Any creditor or claimant against the estate of the deceased may recover his debt or claim out of money paid to any person under subsection (1) of this section and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this section shall affect any claim of an executor or administrator or other representative of the deceased against such person other than a claim to recover amounts lawfully paid by him in due course of administration of the estate of the deceased.
- 4) The director of domestic operations of the Central Bank may, for the purposes of an inquiry under this section, exercise all or any of the powers of a

commissioner under the Commissions of Inquiry Act as if he were a commissioner appointed there under by a commission issued by the Minister.

PART IX

Miscellaneous

37. Signature of director of operations of the Central Bank may be printed on stock or securities

The signature of the director of domestic operations of the Central Bank may be printed, stamped, engraved, or impressed by any mechanical process on any stock certificate, or bearer bond and a signature so printed, stamped, engraved or impressed shall be as valid as if it had been inscribed in the proper handwriting of the chief accountant of the Central Bank.

38. Notice of trust not receivable save as provided

Save as otherwise provided in or under this Act, no notice of any trust in respect of any registered stock or securities shall be receivable by the Central Bank or by the Government.

39. Exemption from stamp duties

All documents or instruments made or used under the provisions of this Act shall be in such form as may be prescribed and shall be free from stamp duty, anything in any other Act to the contrary notwithstanding.

40. Inspection of register and documents

- 1) No person shall be entitled to inspect, or to receive information derived from, any registered stock or security in the possession of the Government or any register, book or other document kept or maintained by or on behalf of the Government in relation to registered stock or securities, save on payment of such fee and save in such circumstances and on such terms and conditions as may be prescribed.
- 2) Nothing in this section shall apply to the Auditor-General for the Federation or to the Deputy Commissioner of

Income Tax.

41. Power to make regulations

- 1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act.
- 2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters-
 - a) the manner in which payment of interest in respect of stock or securities is to be made and acknowledged;
 - b) the circumstances in which promissory notes must be renewed before further payment of interest thereon may be claimed;
 - c) the issue of duplicate stock certificate and duplicate securities;

- d) the renewal of stock certificates and securities;
 - e) the manner of payment of interest to joint holders of stock or securities;
 - f) the circumstances in which alterations may be made in the register;
 - g) the payment of principal or interest and transfer of stock and securities in the case of persons under a legal disability;
 - h) the disposal of unclaimed interest;
 - i) the conditions subject to which stock or securities may be exchanged, consolidated or subdivided;
 - j) to enable holders of registered stock to be described in the register as trustees and either as trustees of any particular trust or as trustees without qualification and for the recognition of powers of attorney granted by holders of stock so described;
 - k) the fees to be paid in respect of anything to be issued or done under the provisions of this Act;
 - l) all matters required by this Act to be prescribed and all matters incidental to or connected with the matters hereinbefore enumerated.
- 3) Nothing in any regulation made hereunder shall, as between any trustees or as between any trustees and beneficiaries under a trust, be deemed to authorise the trustees to act otherwise than in accordance with the rules of law applying to the trust and the terms of the instrument constituting the trust; and neither the Government nor the Central Bank nor any person holding or acquiring any interest in any registered stock shall by reason only of any entry in the register of stock or of anything in any document or instrument relating to registered stock, be affected with notice of any trust of the fiduciary character of any stock holder or of any fiduciary obligation attaching to the holding of any registered stock.

42. Savings

Nothing contained in this Act shall affect the provisions of the General Loan and Stock Act.

LOCAL LOANS (REGISTERED STOCK AND SECURITIES) ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

- 1) Local Loans (Registered Stock) Regulations, 2004.
- 2) Local Loans (First Federal Government of Nigeria Bonds, 2003) Directions, 2004.

Local Loans (Registered Stock) Regulations

ARRANGEMENT OF REGULATIONS

REGULATION

- 1. Citation.

2. Application for allotment.
3. Allotment.
4. Register.
5. Certificates.
6. Joint bond-holdings.
7. Payment of interest.
8. Transfer.
9. Agents.

REGULATION

10. Disability.
11. Death of bondholder.
12. Indemnity.
13. Rights of third parties.
14. Revocation and saving.

LOCAL LOANS (REGISTERED STOCK) REGULATIONS [S.I. 2 of 2004.]

[21st August, 2003]

[Commencement.]

1. *Citation*

These Regulations may be cited as the Local Loans (Registered Stock) Regulations, 2004.

2. *Application for allotment*

Applications for allotment of the bond shall be made of forms to be issued by the Central Bank for the purpose.

3. *Allotment*

- 1) Allotment of bond shall be made in the manner agreed between the Central Bank and the Minister.
- 2) Letters of allotment shall be issued to all persons to whom the bond is allotted.

4. *Register*

- 1) A register of the holders of bond shall be kept by the Central Bank.
- 2) In the event of bond being registered incorrectly owing to any mistake in the request for registration or transfer, the account shall be amended upon the receipt of the letter or declaration, as the case may require, stating how the error arose; in the event of alteration to any name or names in the account which has been necessitated by reason of a transfer, re-execution of the transfer shall be made by the transferor or by his attorney.
- 3) On the marriage of a female bondholder, her name and description shall be altered in the register with respect to bond standing either in her name solely, or jointly with any other persons, on such bondholder producing to the Central Bank, her marriage certificate, and notifying her change of address, if any, and giving full particulars of the accounts in which it is desired to have the

alterations made and specimens of her present and former signatures shall be furnished.

5. Certificates

- 1) Certificates stating the name of the bond holder or bond holders registered as such in the books of the Central Bank shall be issued in exchange for allotment letters at such times as shall be notified in the allotment letters.
- 2) The loss or destruction of any bond certificate shall be notified in writing to the Central bank as soon as practicable by the person entitled to the possession thereof.
- 3) If the Central Bank is satisfied that any bond certificate has been lost or destroyed, or is on the opinion that any bond certificate has been issued in error or has been tampered with or is in such a condition as to render its renewal desirable, the Central Bank may-
 - a) in the case of loss or destruction, issue, after the expiration of two calendar months after the date of receipt of the notification in writing of the loss or destruction, a duplicate certificate; and
 - b) in any other case, issue a renewal of the bond certificate to any person who satisfies the Central Bank that he is entitled to the possession thereof.

6. Joint bond-holdings

- 1) Subject to the provisions of these Regulations, any application with respect to the issue of bond in the names of two or more persons as joint bondholders shall be made by all such persons.
- 2) The joint bondholders of any bond may authorise any person including one of themselves to act as their agent in respect of such bond and the provisions of these Regulations relating to their authorisation of agents shall apply accordingly.
- 3) Where bond is registered in the name of three or more bondholders and an application in that behalf is made in respect of such bond in accordance with the provisions of these Regulations, all things required to be done for the purpose of dealing with such bond may, subject to the provisions of these Regulations be done and given by a majority of the persons who are the bond holders at the date when the application is made or in the case of the death of any of such persons by a majority of the survivors of them.
- 4) An application for the purpose of these Regulations shall be made in writing to the Central Bank.
- 5) A person, who is registered as one of the bondholders of any bond with respect to which an application has been made under these Regulations may give notice in writing to the Central Bank that the application is revoked and on notice

being given, the provisions of these Regulations shall as from the receipt of the notice by the Central Bank, cease to apply to such bond.

- 6) The provisions of this Regulation shall not apply to the transfer of bond.

7. Payment of interest

- 1) The interest due on any registered bond shall be paid on an interest warrant to the registered bondholder or to any person or body of persons to whom the bondholder has by request duly made to the Central Bank.
- 2) No warrant shall be paid until the receipt thereon for the amount thereby payable has been duly signed and such receipt shall be a full discharge to the Government and to the Central Bank for the payment of the sum named in the warrant.
- 3) The posting of a letter containing a warrant sent by the Central Bank in pursuance of these Regulations addressed to any person at the last address furnished by that person to the Central Bank shall, as regards the liability of the Government and of the Central Bank, be equivalent to the delivery of the warrant to the person to whom the letter was addressed.
- 4) Where in pursuance of these Regulations or in accordance with any authority given thereunder, any payment is to be made by the Central Bank to a firm or a body of persons whether corporate or unincorporate, a receipt for the payment given by any person purporting to be an agent or officer of that firm or body and to be authorised to receive the payment shall be a full discharge to the Government and the Central Bank for the amount paid.
- 5) Where bond is registered in the names of two or more persons as joint bondholders, the Central Bank may unless other arrangements with respect to the payment of interest have been made in accordance with these Regulations, pay any interest thereon to the bondholder whose name appears first in the register.
- 6) A receipt for the payment of interest on any bond which is given by anyone of two or more joint bondholders of such bond shall, unless notice in writing to the contrary has been received by the Central Bank from any other joint bondholder of such bond, be a full discharge to the Central Bank and the Government for the payment of that interest.

8. Transfer

- 1) Bond shall be transferable for a minimum of ten thousand naira (₦10,000) and thereafter in multiples of one thousand naira by an instrument of transfer in the common form accompanied by the relevant bond certificate.
- 2) No transfer, consolidation or sub-division of bond shall be made except for a minimum of ten thousand naira (₦10,000) and thereafter in multiples of one thousand naira of bond.

9. Agent

- 1) Subject to the provisions of these Regulations, any bondholder may give an authority in writing authorising any person to act as his agent with respect to bond held by him or with respect to any interest arising therefrom and such authority may-
 - a) relate to the whole bond or to a minimum of one thousand naira of bond which is held or may at any time be held by the person or persons giving the authority;
 - b) authorise the person to whom the authority is given to deal with the bond or interest to which it relates either generally at his discretion or subject to any directions contained in the authority.
- 2) An authority given under this regulation shall be of no effect unless and until it is delivered to the Central Bank.
- 3) An authority given under this regulation may be revoked at any time by the person by whom it was given and shall be determined by the death, bankruptcy or legal disability of that person:

Provided that payment duly made by the Central Bank under these Regulations in compliance with an authority given under regulation shall, notwithstanding the revocation or determination of such authority be deemed for all purposes to be valid unless notice in writing of the revocation had been received by or the death, bankruptcy or disability had come to the knowledge of the Central Bank at the time when payment was made.

- 4) An authority given under this regulation shall, subject to the terms thereof, until revoked or determined-
 - a) remain in force notwithstanding any increase or decrease in the nominal value of the bond to which it relates;
 - b) entitle the person to whom it is given to make any application and sign any document mentioned in these Regulations and to receive any payment in pursuance thereof.
- 5) The provisions of this regulation shall not apply to the transfer of bond.

10. Disability

- 1) If the bondholder of any bond becomes of unsound mind or otherwise subject to legal disability, anything which under these Regulations may be done by or in relation to such bondholder may be done by or in relation to the person having power in law to administer the property of such bondholder.
- 2) Where the Central Bank is satisfied that any person, being one of the two or more joint bondholders, has become of unsound mind or otherwise subject to legal disability, the Central Bank may upon receiving an application in writing in that behalf made by the remaining joint bondholder or bondholders, treat him or them as being entitled to receive any interest accruing thereon.

11. Death of bondholder

- 1) The death of a bondholder shall be proved by production of probate of the will or letters of administration and where necessary, a declaration as to the identity of the deceased shall be made by some disinterested person.
- 2) On completion of the proof of death of a bondholder in a joint account, the bond shall be held at the disposal of the survivor or survivors.
- 3) On the death of the last survivor in a joint account, the bond and interest therein shall be held at the disposal of the executors or administrator of such last survivor.

12. Indemnity

The Government, the Central Bank and any person acting under their authority, shall not be liable in respect of any payment duly made, or act duly done in accordance with these Regulations and any such payment shall, subject to the provisions of regulation 13 of these Regulations, be deemed to have been a valid payment and the receipt of the person to whom the money was paid shall be a full discharge to the Government and to the Central Bank for the amount of the payment.

13. Rights of third parties

No provision of these Regulations for the protection of the Government and of the Central Bank in respect of any act done or any money paid shall operate to prevent the recovery by any person or his representative of any bond or money lawfully due to him from the person to whom such bond was transferred or such money was paid by or under the direction of the Central Bank or from the representative of that person.

14. Revocation and saving

Local Loans (Registered Stock) Regulations are revoked:

Provided that nothing in these Regulations shall affect the application of the Local Loans (Registered Stock) Regulations to any loans raised under the Act before the coming into operation of these Regulations.

**Local Loans (First Federal Government of Nigeria Bonds 2003) (Amendment)
Directions, 2004**

ARRANGEMENT OF SECTIONS

SECTION

1. Citation.
2. Sum of money to be raised and mode of raising the loan.
3. Rate of interest.
4. Sinking Fund.
5. Date of redemption.
6. Redemption by Federal Government giving three months' notice.

7. Interest payable exempt from tax.

LOCAL LOANS (FIRST FEDERAL GOVERNMENT OF NIGERIA BONDS 2003)
(AMENDMENT) DIRECTIONS, 2004 [S.1. 3 of 2004.]

[21st August, 2003]

[Commencement.]

Citation

These Directions may be cited as the Local Loans (First Federal Government of Nigeria Bonds 2003) (Amendment) Directions, 2004.

8. *Sum of money to be raised and mode of raising the loan*

- 1) The sum of money to be raised by the loan shall be an aggregate ₦150,000,000,000 in the form of registered stocks styled as “FGN Bonds”, to be issued in four tranches, as follows-
 - 2) ₦56,000,000,00017 % 1st FGN Bond 2006
 - 3) ₦14,000,000,00018 1/4 % 1st FGN Bond 2008
 - 4) ₦40,000,000,0001st FGN Floating Rate Bond 2010
 - 5) ₦40,000,000,0001st FGN Floating Rate Bond 2013
- 6) The Bond shall be issued at par, payable on application, and in denominations of ₦1,000.
- 7) The Bonds so raised shall be transferable in minimum amounts of ₦10,000 of Bonds and thereafter in multiples of ₦1,000.

3. *Rate of interest*

- 1) Interest at 17 3/4% per annum shall be payable on the 1st FGN Bonds 2006, and 18 1/4% per annum shall be payable on the 1st FGN Bonds 2008. The first interest payment shall be on 31st March 2004, accruing from the date following the deadline for the receipt of returns from the receiving agents and thereafter interest shall be payable half-yearly in arrears on 30th September and 31st March each year until maturity.
- 2) Interest on the 1st Floating Rate Bonds 2010 and the 1st Floating Rate Bonds 2013 shall respectively be at 3.0% per annum and 3.75% per annum above the Treasury Act rate ruling from time to time. The rate ruling shall be the highest successful discount rate established at a CBN conducted auction or the discount rate for the time being established by the CBN, payable on 91 day Treasury Act. The rate applicable from time to time shall be the rate ruling at the beginning of each interest payment period, the first of such interest payment period commencing from the date following the deadline for the receipt of returns from the receiving agents and ending on 31st March 2004, which shall be the first interest payment date. Thereafter, interest shall be payable half yearly in arrears on 30th September and 31st March each year until maturity.

4. *Sinking Fund*

The half-yearly contributions out of the general revenue and assets of the Federation to the sinking hand established for the purpose of redeeming the Bonds, the first of such payment to be made on 30th September 2004 at the following rates of the principal sums as set out hereunder opposite each of the Bonds-

₦ 56,000,000,000.....	17%% 1st FGN Bond 2006
₦ 14,000,000,000.....	18%% 1st FGN Bond 2008
₦ 40, 000,000,000.....	1st FGN Floating Rate Bond 2010
₦ 40, 000,000,000.....	1st FGN Floating Rate Bond 2013

5. *Date of redemption*

The Federal Government of Nigeria shall redeem the Bonds at par on the respective maturity dates, to wit-

₦ 56,000,000,000 173/4% 1st FGN Bond 2006	30 September 2006
₦ 14,000,000,000 181/2% 1st FGN Bond 2008	30September 2008
₦ 40,000,000,000 1st FGN Floating Rate Bond 2010	30 September 2010
₦ 40,000,000,000 1st FGN Floating Rate Bond 2013	30 September 2013

6. *Redemption by Federal Government giving three months' notice*

The Federal Government of Nigeria shall be entitled at any time to redeem the whole or any part of the Bonds on giving to the Bondholders not less than three months' notice (expiring on a day fixed for the payment of interest there on) of its intention to do so and at the expiration of such notice, the Federal Government of Nigeria shall be bound to redeem the Bond or Bonds in respect of which such notice has been given and to pay interest that shall have accrued thereon at a premium of 0.25% for each year or part of a year by which the date of redemption precedes the maturity date of the Bond or Bonds: Provided that any Bond or Bonds to be so redeemed shall be redeemed as between Bondholders on a pro rata basis.

7. *Interest payable exempt from tax*

Interest payable on this Bond shall be exempt from any tax and no tax shall be deducted at source.

Chapter 23

Nigeria Deposit Insurance Corporation Act, 2006

Arrangement of sections

1. Establishment of the Nigeria Deposit Insurance Corporation
2. Board of Direction, etc.
3. Disqualification, etc., of members of the Board
4. Powers of the Board.
5. Functions of the Corporation
6. Head office of the corporation, etc.
7. Power of the Minister to give directives
8. Fund of the Corporation
9. Capital and reserve fund.
10. General reserve fund.
11. Bank account and investment of moneys of the corporation
12. Expenditure.
13. Appointment of the Managing Director, etc.
14. Employment of staff, etc.
15. Participating Institutions
16. Appointment of examiner.
17. Functions of examiners
18. Special examination
19. Offences and penalties, etc.
20. Insurable deposit
21. Assessment of insured banks and special contributions
22. Removal of an insured bank, etc.
23. Conditions of participation after removal
24. Closure of failed bank
25. Action of following a failure
26. Maximum claim
27. Payment of insurable deposit
28. Corporation as a receiver and power to appoint agents

29. Obligation of the Board of a failing bank
30. Advertisement
31. Payment of dividends by insured banks while in default of assessment
32. Fidelity insurance
33. Obligations in respect of unauthorized disclosure
34. Mergers, consolidation and conversion by the corporation
35. Exemption from Cap. 183
36. Power to borrow.
37. Relations with the Central Bank
38. External auditors of all insured banks and reporting requirement
39. Returns on frauds and forgeries
40. Notification to the Corporation of dismissed, etc. staff and employment of dismissed staff
41. Power of the corporation to require information
42. Accounts and audit
43. Annual report
44. Regulations.
45. Liquidation
46. Interpretation
47. Short title

Nigeria Deposit Insurance Corporation Act Chapter 301
Laws of the Federation of Nigeria 1990

An Act to establish, amongst other things, the Nigerian Deposit Insurance Corporation for the purpose of insuring all deposit liabilities of licensed banks and other financial institutions.

15th June 1988

- 1.(1) There is hereby established a body to be known as the Nigerian Deposit Insurance Corporation (hereinafter in this Act referred to as “the Corporation”).
- 2) The Corporation shall be a body corporate with perpetual succession and a common seal.
- 3) The Corporation may sue or be sued in its corporate name and may for the purposes of its functions under this Act and subject to the Land Use Act, hold, acquire and dispose of any property movable or immovable.
- 2.(1) The governing body of the Corporation shall be a Board of Directors (hereinafter in this Act referred to as “the Board”)

- 2) The Board shall consist of the following members who shall be appointed by the President, Commander-in-Chief of the Armed Forces, that is-
 - a. the Governor of the Central Bank of Nigeria who shall be the Chairman or his representative;
 - b. a representative of the Federal Ministry of Finance and Economic Development;
 - c. the Managing Director of the Corporation; and
 - d. two Executive Directors of the Corporation.
- 3) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the matters therein mentioned.
3. (1) Notwithstanding the provisions of section 13(4) of this Act, a person shall cease to hold office as a member of the Board if-
 - (a) He becomes bankrupt, suspends payment or compounds with his creditors; or
 - (b) He is convicted of a felony or any offence involving dishonesty or fraud; or
 - (c) He becomes of unsound mind, or incapable of carrying out his duties; or
 - (d) he is guilty of a serious misconduct in relation to his duties; or
 - (e) in the case of a person possessed of professional qualifications, he is disqualified or suspended other than at his own request from practicing his profession in any part of the world by an order of a competent authority made in respect of that Director; or
 - (f) He resigns his appointment by a letter addressed to the Minister in which case the resignation shall take effect from the date of receipt of the letter by the Minister.
- 2) No employee or a Director of a licensed bank or financial institution insured under this Act shall, while in office, be appointed a Director of the Corporation.
- 3) Whenever the Board is dissolved the Minister shall appoint a Management Committee for the Corporation with the Managing Director as the Chairman to perform the functions of the Board temporarily
4. The Board shall have power-
 - a) To manage and superintend the affairs of the Corporation;
 - b) For the overall policy and general administration and shall act in the name of the Corporation;
 - c) To acquire offices and other premises for the use of the Corporation;

- d) To make, alter and revoke rules and regulations for carrying on the business of the Corporation under this Act;
 - e) To appoint officers which in the opinion of the Board are required for carrying out the functions of the Corporation with particular reference to the examination of any insured bank or carrying out special examination of any insured bank;
 - f) To fix terms and conditions of service including remuneration of the employees of the Corporation;
 - g) To advise the Minister on the need to close an insured bank if in the opinion of the Board its continued operation will jeopardize the interests of depositors;
 - h) To serve notice on an insured bank of its intention to remove the bank from its record of insured banks after a cease and desist order has been issued and after three consecutive warnings to improve the insured bank operational standard and it has failed to do so;
 - i) To assume, with the approval of the Minister, the management of a failing bank and to advise the Minister on the action it intends to take on the assets and liabilities of the bank;
 - j) to arrange for the sale of the assets and pay dividends to creditors of a failed bank as a receiver;
 - k) To appoint claim agents who shall be empowered to investigate and examine claims on insured deposits;
 - l) With the approval of the Minister, to serve a notice of removal from office on any officer or director who has committed any violation of the law, rules or regulations of the Corporation or has engaged in an unsound practice that may lead the bank to financial loss;
 - m) to prosecute any officer or director who has committed any serious violation of the provisions of this Act; and
 - n) To do such other things and enter into such other transactions which in the opinion of the Board are necessary to ensure the efficient performance of its functions.
- 5.(1) The Corporation shall have responsibility for-
- a) Insuring all deposit liabilities of licensed banks and such other financial institutions operating in Nigeria within the meaning of sections 20 and 26 of this Act so as to engender confidence in the Nigerian banking system;
 - b) giving assistance in the interest of depositors, in case of imminent or actual financial difficulties of banks particularly where suspension of

- payments is threatened; and avoiding damage to public confidence in the banking system;
- c) guaranteeing payments to depositors, in case of imminent or actual suspension of payments by insured banks or financial institutions up to the maximum amount as provided for in section 26 of this Act;
 - d) assisting monetary authorities in the formulation and implementation of banking policy so as to ensure sound banking practice and fair competition among banks in the country;
 - e) pursuing any other measures necessary to achieve the functions of the Corporation provided such measures and actions are not repugnant to the functions of the Corporation.
6. The Corporation shall have its Head Office at a place to be determined by the Board and may, subject to the approval of the Board, open branches in other States of the Federation of Nigeria and appoint agents and correspondents in accordance with the decision of the Board.
7. The Minister may give to the Board directives of a general or special nature with regard to the functions of the Corporation and it shall be the duty of the Chairman, the Board and the Managing Director to comply with the directives.
8. (1) The fund of the Corporation shall consist of-
- a) assessed premiums paid by insured banks and other financial institutions in accordance with section 20 of this Act;
 - b) income from the investments of the Corporation;
 - c) monies borrowed from any source with the approval of the Board; and
 - d) moneys from any other source as may be approved by the Corporation.
- 1) The Corporation shall, with the prior approval by a resolution of the Board, operate a current or other special accounts with the Central Bank of Nigeria
9. (1) The authorised capital of the Corporation shall be one hundred million naira.
- 2) On a resolution of the Board, there shall be paid up such amount as shall be subscribed by and paid-up at par in a proportion of sixty per cent and forty per cent by the Central Bank of Nigeria and the Federal Government of Nigeria respectively on the establishment of the Corporation.
- 3) The authorised capital of the Corporation may be increased by such amount as the Board may by special resolution determine from time to time.

10. (1) The Corporation shall establish a general reserve fund to which shall be transferred the Corporation's net operational surplus before tax if the reserve fund is less than ten times the paid-up capital.
- 2) Where the reserve fund is more than ten times the paid-up capital at the end of the year, seventy-five per cent of the net operational surplus before tax shall be transferred to the reserve fund, fifty per cent of the remaining amount after tax shall be supplied to reduce the annual premium payable by insured banks while the remaining fifty per cent shall be paid to the shareholders.
- 3) The net operational surplus of the Corporation for each year shall be determined after meeting all the current expenditure for that year and after making such provisions as the Board may deem fit for depreciation of assets, contribution to staff and superannuation funds and all other contingencies.
11. (1) The Corporation shall have power to invest money not immediately required in Federal Government securities or in such other securities as the Board may from time to time, determine.
- 2) The incomes from the money invested as prescribed by subsection (1) of this section shall be credited to the account of the Corporation.
- 3) All administrative expenses shall be defrayed out of the income of the Corporation.
12. (1) There shall be chargeable to the Corporation-
 - a) all expenses incurred on behalf of the Corporation;
 - b) all payments of excess assessment;
 - c) moneys required for the payment of moneys borrowed on behalf of the corporation;
 - d) payment to a bank which assumes the deposits of an insured bank; and
 - e) payment to depositors when an insured bank or institution becomes insolvent.
13. (1) There shall be appointed for the Corporation the following, that is-
 - a) the Managing Director, who shall be the Chief Executive of the Corporation and shall be responsible for the day-to-day management of the Corporation; and
 - b) two Executive Directors who shall perform such duties as may be assigned to them from time to time by the Board or Managing Director.
- 2) The President, Commander-in-Chief of the Armed Forces shall appoint the Managing Director and the Executive Directors specified in subsection (1) of this section.

- 3) Any person appointed as the Managing Director or an Executive Director shall not, while holding that office, qualify to hold any office as a director in any bank, corporation, company or any other establishment without the approval of the Board.
- 4) The Managing Director and Executive Directors appointed pursuant to the provisions of this section shall hold office for a period of five years and shall be eligible for re-appointment for a further period of .five years.
- 5) Subject to subsection (4) of this section, the Managing Director and Executive Directors shall each hold office on such terms and conditions as may be specified in their letters of appointment.
14. (1) The Board shall appoint such number of officers and servants as may appear expedient and necessary to the Board for the proper and efficient conduct of the business and functions of e Corporation.
- 2) The Board shall appoint a Secretary who shah be responsible to the Managing Director, and shall keep the Board's records and conduct its correspondence and perform such other duties the Board or the Managing Director may, from time to time, determine.
- 3) The terms and conditions of service (including remuneration, allowances and pension benefits) of the Secretary and other staff of the Corporation shall be as may be determined by the Board.
15. (1) As from the commencement of this Act-
 - a. all licensed banks and such other financial institutions in Nigeria engaged in the business of receiving deposits shall be required to insure their deposit liabilities with the Corporation;
 - b. any licensed bank or such financial institution which contravenes the provisions of paragraph (a) of subsection (1) of this section shall be guilty of an offence and liable on conviction to a fine of one thousand naira for each day the offence is committed;
 - c. all licensed banks or such other financial institution in existence and carrying on business before the commencement of this Act shall comply with the provisions of this Act.
- 2) Without prejudice to the provisions of subsection of this section, all licensed banks or financial institutions shall as from the end of their first year after the commencement of this Act, be subject to the provisions of this Act.
16. (1) The Board shall have power to appoint on recommendation of the Managing Director, such number of examiners who shall-

- a) be officers of the Corporation with powers to examine periodically, and under conditions of secrecy, the books and affairs of every insured bank;
 - b) have a right of access at all times to the books, accounts and vouchers of the insured bank;
 - c) be entitled to require and obtain information and explanations from the officers and directors of an insured bank as may be deemed necessary in the performance of their duties; and
 - d) have access to any accounts, returns and inform with respect to any bank: insured under the provision of this Act which are in the possession of the Central Bank: of Nigeria.
17. (1) In the exercise of the functions of an examiner appointed pursuant to subsection (1) of section 16 of this Act, the examiner shall exercise reasonable care to prevent unreasonable hindrance to the day-to-day activities insured bank and confine the investigation to matters of fact and data deemed necessary for the examination.
- 1) An insured bank shall produce as and when required, all books, accounts, documents and all information examiner may deem fit in the exercise of the functions.
 - 2) It shall be an offence under this Act for an insured bank to-
 - a) wilfully refuse to produce any book, account, document or information; or
 - b) negligently, wilfully or with intent to defraud give any information which is false in any material particular.
 - 3) A person guilty of an offence under this section shall be liable on conviction-
 - a) in the case of an offence against paragraph (a) of sub section (3) of this section, to a fine of two hundred naira in respect of each day in which the offence continues; or
 - b) in the case of an offence against paragraph (b) of subsection (3) of this section, to a fine of one thousand naira.
 - 4) An examiner shall forward a report of his findings to the Managing Director who shall thereon forward a copy to the Board and inform the Board of any circumstances in which the Board may exercise any of its powers under the provisions of section 4 or 18 of this Act.
18. (1) Subject to the approval of the Minister, the Board may at any time direct the Managing Director to appoint two or more qualified persons to make a special examination of the books and affairs of an insured bank

under conditions of secrecy where the Board is of the opinion that an insured bank-

- a) may be carrying on business in a manner detrimental to the interest of its depositors and creditors;
 - b) may have insufficient assets to cover its liabilities to the public; or
 - c) may be contravening the provisions of this Act.
- 2) Where an insured bank: deems that-
- a) it is likely to become unable to meet its obligations; or
 - b) it is about to suspend payments, the insured bank shall cause the Corporation to be Informed accordingly of the intention to do so.
- 3) Any insured bank which contravenes the provisions of subsection (2) of this section shall be guilty of an offence and liable on conviction to a fine of ten thousand naira.
- 4) Not later than one month after the conclusion of an examination under this section., the examiner shall submit a full report thereon to the Managing Director who shall submit a copy of the report and his comments to the Minister for his consideration after the report shall have been examined by the Board of the insured bank at a meeting specially convened for that purpose.
19. (1) Any person who, being a Director or an officer of a licensed bank or oilier financial institution who-
- a) fails to take all reasonable care to secure compliance with the provisions of this Act; or
 - b) fails to take all reasonable care to secure the authenticity of any statement submitted pursuant to the provisions of this Act, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding fifty thousand naira or to both such fine and imprisonment.
- 2) Without prejudice to section 160 of the Constitution of the Federal Republic of Nigeria (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in any court of law), the Corporation may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.

- 3) All moneys received by the Corporation under the provisions of subsection (2) of this section shall be paid into the Consolidated Revenue Fund of the Federation.
- 4) All offences under this Act shall be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed. Insurable deposit.
20. All deposits of a licensed bank or any other financial institution shall be insured with the Corporation with the exception of the following that is-
 - a) insider deposits, that is, deposits of staff including directors of the licensed bank or financial institution;
 - b) counter-claims from a person who maintains both a deposit and loan accounts, the former serving as a collateral for the loan; or
 - c) such other deposits as may be specified from time to time by the Board.
21. (1) Every licensed bank or other financial institution to which this Act relates, shall be obliged to pay to the Corporation, a premium which shall be fifteen sixteenths (15/16) of one per cent per annum of the total deposit liabilities standing in its books as at 31st December of the preceding year in the following manner, that is-
 - a) the deposit liabilities shall be as certified by the approved auditor of the licensed bank or such other financial institution;
 - b) the certified deposit liabilities shall be forwarded to the Corporation on or before 31st January of every year; and
 - c) the annual premium shall be payable not later than two months from the date of the demand notice.
- 2) The premiums payable under subsection (1) of this section shall not be chargeable to depositors in any form whatsoever; and shall be deemed payable on the coming into force of this Act.
- 3) Where the funds of the Corporation are not sufficient for measures of assistance within the meaning of subsection 1 (b) of section 5 of this Act or otherwise required for the implementation of the object of the Corporation, all participating banks or such other financial institutions shall be obliged without prejudice to subsection (1) of this section to pay special contribution up to the amount of an annual premium to the Corporation.
- 4) participating bank may be permitted to provide out of profits before tax a sum equal to the annual premium payable to the Corporation.
- 5) Where a participating bank has assumed the deposit liabilities of another bank, such deposit liabilities of the other bank shall be added to its own

balance sheet figure of total deposit liabilities for purposes of assessing its premium payable to the Corporation.

- 6) Any premium payable by a licensed bank or other financial institution and which remains unpaid for more than three months after a demand notice has been served on such licensed bank or financial institution, shall attract an interest at the prevailing interest rate payable on a savings deposit account.
22. (1) Whenever it appears to the Corporation that insured bank or its directors or trustees have committed a grievous violation of its obligations or have continued to conduct the business of the bank-
 - a) in an unsound manner;
 - b) intentionally or negligently permit any of the officers or agents of the insured bank to violate any provisions of any law or regulation to which an insured bank is subject, the Corporation shall serve on the Board of the insured bank a warning notice stating that where the unsound practice continues, the name of the bank shall be removed from the register of insured banks and forward a copy of such warning notice to the Central Bank of Nigeria and the Minister.
- 2) It shall be deemed a grievous violation of obligation under this Act where an insured bank-
 - a) persistently suffers liquidity deficiency;
 - b) persistently contravenes the provisions of the Banking Act, and any rules and regulations made thereunder, the monetary policy guidelines and the provisions of this Act;
 - c) makes incomplete or incorrect statements to the Corporation;
 - d) is in default with the payment of its annual premium or special contribution as provided in section 21 of this Act;
 - e) continue to hold itself out as an insured bank after its insurance with the Corporation has been terminated for default;
 - f) habitually fails to render returns to the Corporation or does not submit upon request such other information for the efficient performance of the functions of the Corporation;
 - g) makes incorrect statements to the Corporation as regards customers' deposits it has insured;
 - h) fails to make adequate provisions for bad and doubtful debts up to the amount recommended by the Corporation or pays dividends in defiance of this provision; or
 - i) fails to write off bad debts as may be recommended by the Corporation.

- 3) Where the insured bank fails within a reasonable time to make amendments, the Board shall-
 - a) give to the bank not less than thirty days written notice of its intention to terminate the status of the bank as an insured bank; and
 - b) fix a time and place of hearing before a person designated by the Board to conduct the hearing at which evidence may be produced, and upon such evidence the Board shall make its findings which shall be final.
- 4) Where the bank is not duly represented at the hearing by an authorised representative, it shall be deemed to have consented to the termination of its status as an insured bank and the Corporation shall inform the Central Bank of Nigeria and the Minister.
- 5) The Corporation shall cause a notice of such termination to be published in the national newspapers.
- 6) Where the participation of a bank in the Corporation is terminated, the bank shall immediately cause a notice of such termination to be published in the national newspapers, to the creditors to whom liabilities are owed and in furtherance thereto, bring the consequences of such termination to their notice.
- 7) After the termination of the status of an insured bank under subsection (3) of this section, the insured deposit of each depositor in the bank on the date of its termination, less all subsequent withdrawals from the deposits of such depositor, shall continue to be covered for another period of two years, and thereafter such depositor shall cease to be covered where the net assets are sufficient to meet the insured deposit.
- 8) The Corporation shall not insure any additions to any deposits specified in subsection (7) of this section or any new deposits in the bank made after the date of termination of its status as an insured bank and shall not advertise or hold itself out as having insured deposits.
- 9) Where an insured bank is closed on account of its inability to meet the demands of its depositors, the Corporation shall have the powers and rights to recover any debts owed to the closed bank or any asset (including properties belonging to the closed bank) but which are in possession of any other person or institution.
- 10) Where the insured status of a bank is terminated by reason of its inability to meet the demand of its depositors, the Minister shall appoint the Corporation as the receiver for the bank.
23. (1) A bank whose status as an insured bank is terminated in accordance with section 22 of this Act may re-apply to participate in the Corporation

after the terminated bank has satisfied all the conditions required of it by the Board particularly after the Board has given consideration to the following, that is-

- a) the financial position and its general operational practice since the termination order became effective;
 - b) that the grounds for which the bank's participation in the Corporation was terminated have been satisfied; and
 - c) the future earnings prospects and general character of its management are satisfactory.
- 1) Pursuant to subsection (1)(b) of section 5 of this Act, the Corporation shall at the request of an insured bank and under such conditions as may be specified by the Corporation assist the bank if it-
- a) has difficulty to meet its obligations to its depositors and other creditors; or
 - b) persistently suffers liquidity deficiency; or
 - c) has accumulated losses which have nearly or completely eroded the shareholders fund.
- 3) The Corporation may take one or a combination of actions or any of the following to assist a failing bank, that is-
- a) grant loans on such terms as may be agreed upon by the Corporation and the failing bank;
 - b) give guarantee for a loan taken by the insured bank;
 - c) accept an accommodation bill with interest for a period not exceeding ninety days maturity exclusive of days of grace and subject to renewals of not more than four times;
 - d) subject to the approval of the Minister on the recommendation of the Central Bank of Nigeria-
 - (i) take over the management of the bank until its financial position has substantially improved, or
 - (ii) direct specific changes to be made in the management of the bank within such time as the Corporation may specify, or
 - (iii) arrange a merger with another bank or contract to have the deposit liabilities assumed by another insured bank; in which case, the receiving bank shall assume all the recorded deposit liabilities of the failing bank.
- 4) The receiving bank shall receive those assets of the failing bank that are acceptable and an amount equal to the difference between the assumed deposit liabilities and acceptable assets shall be advanced to the receiving bank by the Corporation.

- 5) The Corporation shall receive the unacceptable assets from the failing bank and regard such assets as collateral of the advance to the receiving bank or purchase the unacceptable assets from the failing bank.
24. For the purpose of this Act, an insured bank shall with the approval of the Minister be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.
 - 1) It shall be the duty of the Corporation to cause notice to be given, by advertisement in such national newspapers requiring all depositors with the bank facing liquidation to forward their claims to the Corporation.
 - 2) The receiver appointed for the purpose of this section shall have power-
 - a) to realise the assets of the failed bank;
 - b) to enforce the individual liability of the shareholders and directors thereof; or
 - c) to wind up the affairs of such failed bank as herein otherwise provided.
 - 3) The receiver shall pay to the Corporation such portion of the amount realised from such Liquidation as it shall be entitled to receive on account of its subrogation to the claims of depositors and it shall pay to the depositors and other creditors the net amount available for distribution to them.
 - 4) The receiver so appointed may pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to subsection (1) of this section and no liability shall attach to the Corporation itself or such other receiver by reason of any such payment for failure to pay dividend to a claimant whose claim is not proved at the time of any such payment.
26. A depositor shall receive from the Corporation as provided under subsection (1)(c) of section 5 of this Act a maximum amount of fifty thousand naira of assessable deposit of an insured bank in the event of a failure.
- 27.(1) Where an insured bank fails on account of inability to meet the demands of its depositors, payment of the insured deposit in such bank shall be made by the Corporation as soon as possible either-
 - a) by cash; or
 - b) by making available to each depositor a transferred deposit in a new bank in the same area, or in another insured bank in an amount equal to the insured deposit of such depositors:

Provided that-

- (i) where the Corporation is liable to make payment in pursuance of this section it shall, at its discretion, require proof of claim from all depositors with the insured bank, and
 - (ii) where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determination by a court of competent jurisdiction before paying such claim.
- 2) The Corporation upon the payment to any depositor as provided in subsection (1) of this section, shall be subrogated to all rights of the depositor against the failed bank to the extent of such payment; and such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such bank and recoveries on account of shareholders' liability as would have been payable to the depositor's claim for any uninsured portion of his deposit.
 - 3) Not later than three months after the failure of an insured bank, the Corporation, if it finds that it is advisable in the interest of the depositors or the public, shall appoint another insured bank to assume the insured deposits of the failed bank..
28. (1) Subject to the approval of the Minister, the Corporation shall act as a receiver of a failed insured bank and appoint an agent or agents to assist it in the performance of these duties, and all fees, compensation and expenses of liquidation and administration thereof shall be fixed and paid by the Corporation from the realised assets of the failed bank.
- 1) Payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new bank or by an insured bank in which a transferred deposit has been made available shall discharge the Corporation and such new bank or other insured bank, to the same extent that payment to such person by the failed bank would have discharged it from liability for the insured bank.
 - 2) The Corporation may withhold payment of such portion of the insured deposit of any depositor in a failed bank as may be required to provide for the payment of any liability of such depositor as a shareholder of the failed bank, or of any liability of such depositor to the failed bank or its receiver, which is not offset against a claim due from such bank, pending the determination and payment of such liability by such depositor or any other person liable thereof.

- 3) If, after the Corporation shall have given at least three months' notice to the depositor by mailing a copy thereof to his last known address appearing on the records of the failed bank, any depositor in the failed bank who-
 - a) fails to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the failed bank; or
 - b) fails within such period to claim or arrange to continue the transferred deposit with the new bank or with the liability thereof, all the rights of the depositor against the failed bank, its shareholders or the receivership estate to which the Corporation may have become subrogated, shall thereupon revert to the Corporation.
- 4) The amount of any transferred deposits not claimed within the period stated in subsection (4)(b) of this section shall be refunded to the Corporation.
29. (1) The Board of a failed bank shall be obliged to offer the assets of the bank for sale to the Corporation or as security for loans from the Corporation.
 - 1) The proceeds of every such sale or loan shall be expended for the same purpose and in the manner as other funds realised from the liquidation of the assets of the bank.
30. An insured bank may use the Corporation for purposes of advertisement without prior approval from the Corporation.
31. Without prejudice to the provisions of subsection (6) of section 10 of the Banking Act, no insured bank shall pay any dividend on its capital stock while it remains in default in the payment of any assessment due to the Corporation, and any director or officer of any insured bank who participates in the declaration or payment of any such dividend shall be guilty of an offence under this Act and liable on conviction to a fine of not less than two thousand naira.
32. Any licensed bank or such other financial institution which insures its deposits with the Corporation shall be required to provide fidelity bond coverage.
33. (1) The members of Board and staff of an insured bank shall keep strictly confidential and make no unauthorised disclosure or use of any information which they may either directly or indirectly receive in such capacity of the activities of the insured bank and the result thereof of the Corporation and of the circumstance of the participating banks and their customers, even after they cease to be members or staff of that bank.

- 2) The obligation specified in subsection (1) of this section shall also be imposed upon employees of and other persons engaged by the Corporation.
 - 3) The provisions of subsection (1) of this section shall not apply to communications made to the Central Bank of Nigeria, the Bankers Committee or the Federal Ministry of Finance and Economic Development in connection with the purposes of the Corporation.
 - 4) The provisions of subsection (1) of this section shall not apply to communications in connection with the admission or exclusion of a banking institution.
34. Subject to the approval of the Minister, the Corporation shall have power to direct that-
- a) a failing bank insured with the Corporation pursuant to this Act shall merge or consolidate with any other insured bank or financial institution subject to the provisions of subsection (5) of section 23 of this Act;
 - b) any insured bank or financial institution merged or consolidated with a failing bank pursuant to paragraph (a) of this section shall pay any deposit made to the failing bank or settle any other financial liabilities of the failing bank;
 - c) any asset (including land) of the failing bank shall be transferred or be vested in the insured bank or financial institution concerned with the merger or consolidation.
35. The Corporation shall be exempted from the provisions of the Insurance Act.
36. (1) The Corporation shall have power to borrow from the Central Bank of Nigeria such moneys as it may deem fit for the discharge of its functions under this Act
- 1) The Central Bank of Nigeria may guarantee in such manner and upon such terms as it may deem fit the redemption and the repayment of any interest on any debenture stocks raised by the Corporation.
37. (1) The Corporation shall have access to the report of examination by Bank Examiners of the Banking supervision Department of the Central Bank of Nigeria.
- 2) The Corporation shall make a report of its examination and any other information essential to safe and sound banking practice available to the Central Bank of Nigeria.

- 3) The Banking Supervision Department of the Central Bank of Nigeria shall forward to the Corporation its comments on First and Second Schedules returns of insured banks as well as their liquidity positions.
- 4) The Banking Supervision Department of Central Bank of Nigeria shall be required to inform the Corporation on all the contraventions committed by any licensed bank insured under the provisions of this Act.
- 5) The Corporation shall co-operate with the Central Bank of Nigeria on matters affecting any of the insured banks.
38. (1) No duty to which an auditor of an insured bank or a person appointed under section 20 of the Banking Act is subject, shall be contravened by reason of his communicating in good faith to the Corporation whether or not in respond to a request made by it, any information or opinion on a matter to which this section applies and which is relevant to safe and sound banking practice.
- 2) An auditor of an insured bank shall recognize the Corporation's responsibility for the protection of the interest of depositors and shall bring to the notice of the Corporation-
 - a) any extreme situation such as evidence of imminent financial collapse;
 - b) evidence of an occurrence which had led or is likely to lead to a material diminishing of the insured bank's net asset;
 - c) evidence that there has been a significant weakness in the accounting and other records or the internal control systems of the insured bank;
 - d) evidence that the management of the insured bank has reported financial information to the Corporation which is misleading in a material particular;
 - e) where he believes that a fraud or other misappropriation has been committed by the directors or the management of the insured bank or has evidence of the intention of directors or senior management to commit such fraud or misappropriation; or
 - f) where there has been an occurrence which causes the auditor to no longer have confidence in the competence of the directors or the senior management to conduct the business of the insured bank in a prudent or safe and sound manner so as to protect the interest of the depositors such as acting in an irresponsible or reckless manner in respect of the affairs of the insured bank.
- 3) Any auditor of an insured bank who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of

subsection (2) of this section shall be guilty of an offence and liable on conviction to a fine of not less than fifty thousand naira.

39. (1) An insured bank shall render to the Corporation, monthly returns of frauds, forgeries or outright theft occurring during such month and shall include a detailed report of such events.
40. (1) An insured bank shall notify the Corporation of any staff dismissed, terminated or advised to retire on the ground of fraud.
 - 2) Persons affected under subsection (1) of this section shall not be employed in an insured bank without the insured bank first notifying the Corporation.
 - 3) Any insured bank which acts in contravention of or fails to comply with any of the provisions of subsections (1) and (2) of this section shall be guilty of an offence under this Act and liable on conviction to a fine of not less than fifty thousand naira.
41. (1) Every insured bank shall submit to the Corporation such returns and information as may be required from time to time within the stipulated period.
 - 2) Any insured bank which fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence under this Act and shall be liable on conviction to a fine of five hundred naira for each day during which the offence continues.
 - 3) In addition to the powers conferred on it under this Act, the Corporation may require persons having access thereto, at all reasonable times to supply to it information, in such form as the Corporation may from time to time direct, relating to, or touching on or concerning matters affecting the interest of depositors of insured banks.
 - 4) Where any person lawfully required to supply information necessary to achieve the objective and purpose of the Corporation-
 - a) supplies any information which he knows to be false or supplies it recklessly as to its truth or falsity; or
 - b) without reasonable excuse (the proof of reasonableness to lie on him) fails to comply with any requirement of the Corporation, the supply or failure to supply, as the case may be, as therein provided, shall be an offence under this section punishable upon conviction by a fine of not less than two thousand naira or not more than five thousand naira for every false report and by a fine of not less than five hundred naira or not more than one thousand naira for every day during which the failure to comply continues.

42. (1) The Managing Director shall submit to the Board for approval not later than 30th September of each year an estimate of its expenditure and income during the next succeeding year.
- 2) The Corporation shall keep proper accounts in respect of each financial year, and proper records in relation to those accounts and shall cause the accounts to be audited within six months after the end of the financial year.
- 3) For the purpose of subsection (1) of this section, three months after the end of each financial year, a report which shall be in such form as the Board may direct and shall relate to the activities of the Corporation during the immediately preceding financial year and thereafter a copy each shall be submitted to the Governor of the Central Bank of Nigeria and the Minister.
- 44. Any power to make regulations, rules or orders conferred by this Act shall include-
 - a) power to make provisions for such incidental and supplementary matters as the authority making the instrument considers expedient for the purposes of the instrument; and
 - b) power to make different provisions for different circumstances.
45. (1) The Corporation shall not be placed in liquidation except pursuant to the provisions of a law or enactment in that behalf and then in such manner as that law or enactment may specify.
46. In this Act, unless the context otherwise requires-

“bank” means any person who carries on the business of banking which includes the acceptance of deposits; “Board” means the Board of Directors of the Corporation;

“competent court” means a High Court of the State including the High Court of the Federal Capital Territory, Abuja and the Federal High Court;

“Corporation” means the Nigeria Deposit Insurance Corporation established pursuant to section 1 \of this Act; “deposit” means moneys lodged by the general public with any persons for safe- keeping or for the purpose of earning interest or dividend whether or not such moneys are repayable upon demand, upon a given period of notice or upon a fixed date;

“financial institutions” means any person in Nigeria who transacts banking business but who is not a licensed bank; “insured bank” means a licensed bank and other deposit taking non-banking financial institution, the deposits of which are insured in accordance with the provisions of this Act;

“Minister” means the Minister charged with responsibility for matters relating to finance; a receiver;

“State” means any of the States of the Federation.

47. This Act may be cited as the Nigeria Deposit Insurance Corporation Act. Schedule

Proceedings of the Board

The Board may make standing orders regulating the proceedings of the Board or of any committee thereof; and shall meet not less than once in each of any six months in every year.

The quorum of the Board shall be three which shall include the representative of the Central Bank of Nigeria and the Ministry of Finance and Economic Development.

3. (1) Subject to the provisions of any applicable standing orders, the Board shall meet whenever summoned by the Chairman; and if the Chairman is required so to do by notice given to him by not less than three other member, shall summon a meeting of the Board to be held within twenty-one days from the date on which the notice is given.
- 2) At any meeting of the Board, the Chairman shall preside or in his absence, the members present at the meeting shall appoint one of their number to preside at that meeting.
- 1) Where the Board wishes to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit, but a person who is a member by virtue of this subparagraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.
- 2) Notwithstanding anything to the contrary, the first meeting of the Board shall be summoned by the President, Commander-in-Chief of the Armed Forces who may give such directives as to the procedure to be followed at that meeting as he may deem fit.
- 4.(1) The Board may appoint one or more committees to carry out on behalf of the Board, such of its function as the Board may determine.
- 2) A committee appointed under this paragraph shall consist of the number of persons determined by the Board and not more than one-third of those persons may be persons who are not members of the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of the instrument by which he is appointed.

- 3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.
- 4.(1) The fixing of the seal of the Corporation shall be authenticated by the signature of the Chairman and of some other member authorized generally or specially by the Board to act for that purpose. Any contract or instrument which if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by any person generally or specially authorized to act for that purpose by the Board.

Chapter 24

Dishonoured Cheques (Offences Act) CAP D11 LFN, 2004

ARRANGEMENT OF SECTIONS

Section

1. Offences in relation to dishonoured cheques, etc.
2. Offences by body corporate.
3. Procedure for trial of offences.
4. Short title, etc.

DISHONOURED CHEQUES (OFFENCES) ACT

An Act to make it an offence for any person anywhere in Nigeria to induce the delivery of any property or to purport to settle a lawful obligation by means of a cheque which when presented within a reasonable time is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque, and for matters connected therewith.

[20th May, 1977] [Commencement]

1. Offences in relation to dishonoured cheques, etc.

- 1) Any person who-
 - a) Obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or
 - b) Obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall-
 - i. In the case of an individual be sentenced to imprisonment for two years, without the option of a fine; and
 - ii. In the case of a body corporate, be sentenced to a fine of not less than ₦5,000.
- 2) For the purpose of subsection (1) of this section;
 - a) The reference of anything capable of being stolen shall be deemed to include a reference to money and every other description or property, things in action and other intangible property;

- b) A person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued, shall be deemed to have obtained credit for himself by means of the cheque, notwithstanding that the obligation that would be settled was not specified.
- 3) A person shall not be guilty of an offence under this section if he proves to the satisfaction of the court that when he issued that cheque he had reasonable grounds for believing, and did believing in fact, that it would be honoured if presented for payment within the period specified in subsection (i) of this section.

2. Offences by body corporate

Where any offence under this Act by a body corporate is proved to have been committed with the consent of/or connivance of, or to attribute to any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the body corporate, (or any person purporting to act in any such capacity), he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeding against and punished in the same manner as an individual.

3. Procedure for trial of offences

- 1) Offences under this Act shall be triable summarily by the High Court of the State where the offence was committed and the procedure applicable in the case of summary trial of offences before such court shall apply to the same extent for the purposes of trials for offences under this Act.
- 2) Authority to exercise the powers of the Attorney-General of the Federation under section 160 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the initiation and conduct of criminal proceedings for offences under an enactment) is hereby, in respect of any offence under this Act committed in a state, conferred on the Attorney-General of that State, but nothing in this subsection shall be construed as precluding the Attorney-General of the Federation from exercising any of the powers to which this subsection relates.

[Cap. C23.]

4. Short title, etc.

- 1) This Act may cited as the Dishonoured Cheques Offences) Act.
- 2) Section 25 of the interpretation Act (which provided that a person shall not be punished twice in when guilty of an offence under more than one enactment) shall apply in respect of offences under this Act.

Chapter 25

International Financial Organisations Act (1960 No. 47)

ARRANGEMENT OF SECTIONS

- 1) Short title.
- 2) Interpretation.
- 3) Authorization for signing of the agreements.
- 4) Financial provisions.
- 5) Status and immunities of organizations.
- 6) Certain provisions not to take effect.

INTERNATIONAL FINANCIAL ORGANISATIONS ACT

An Act to enable Nigeria to become a member of the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation and the International Development Association.

[1960 No. 47.)

[30th September, 1960)

[Commencement.)

1. Short title

This Act may be cited as the International Financial Organisations Act.

2. Interpretation

In this Act, unless the context otherwise requires—"Association" means the International Development Association;

"Association Agreement" means the articles of agreement for the establishment and operation of the Association;

"Bank" means the International Bank for Reconstruction and Development;

"Bank Agreement" means the articles of agreement for the establishment and operation of the Bank;

"Corporation" means the International Finance Corporation;

"Corporation Agreement" means the articles of agreement for the establishment of the corporation;

"Federal Government" means the Government of the Federal Republic of Nigeria;

"Federation" means the Federal Republic of Nigeria;

"Fund" means the International Monetary Fund;

“Fund Agreement” Agreement” means the articles of agreement for the establishment of the fund;

“Minister” means the Minister charged with responsibility for matters relating to finance.

3. *Authorization for signing of the agreements*

Subject to the provisions of section 6 of this Act, the Minister is hereby authorized on behalf of the Federal Government to sign the Fund Agreement, the Bank Agreement, the Corporation Agreement and the Association Agreement and to deposit, in the cases of the Fund Agreement and the Bank Agreement, with the Government of the United States, and, in the cases of the Corporation Agreement and the Association Agreement, with the Bank, instruments of acceptance of the said agreements and of the terms and conditions respectively prescribed there under, relating to the admission of the Federal Government to membership, or by instruments under his hand, to empower such person as may be named in such instruments to sign the said Agreements and to deposit the said instruments of acceptance as aforesaid.

4. *Financial provisions*

- 1) There shall be paid out of the Development Fund or the Consolidated Revenue Fund, on the warrant of the Minister, all sums required for the purposes of paying-
 - a) the subscription payable to the Fund in accordance with section 2 of Article II of the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of the Federation in the Fund;
 - b) any sums payable to the Fund under paragraph (b) or paragraph (d) of section 8 of Article IV of the Fund Agreement (which relates to changes in the par or foreign exchange values of currencies of members);
 - c) any compensation required to be paid to the Fund or to any member thereof under Schedule D of the Fund Agreement (which relates to the withdrawal of members from the Fund) or under Schedule E thereof (which relates to the liquidation of the Fund);
 - d) the moneys on account of the subscription for shares in the Bank under Article II of the Bank Agreement (including any sums payable to the Bank under section 9 of that Article relating to changes in the par or foreign exchange values currencies of members), and the Resolution of the Board of Governors of the Bank relating to membership of the Federation in the Bank;
 - e) any amounts required to be paid to the Bank under head (iv) of paragraph (c) of section 4 of Article VI of the Bank Agreement;
 - f) the moneys payable on account of the subscription for shares in the Corporation under Article II of the Corporation Agreement and the

Resolution of the Board of Governors of the Corporation relating to membership of the Federation in the Corporation not exceeding in the aggregate, the sum of three hundred and sixty-nine thousand United States Dollars;

- g) any amounts required to be paid to the Corporation under head (iii) of paragraph (c) of section 4 of Article V of the Corporation Agreement;
- h) subject to the provisions of section 6 of this Act, all sums required to be paid on behalf of the Federal Government under the Association Agreement, that is to say –
 - i) paragraph (a) to (d) of section 2 of Article II (which relate to the initial subscription of members);
 - ii) paragraph (a) of section 2 of Article IV (which relates to changes in the par or foreign exchange value of currencies of members);
 - i) any amounts or charges required to be paid to the Fund, the Bank, the Corporation or the Association, such amounts or charges being incidental to the Federal Government's membership thereof respectively, or to the operations or transactions in relation thereto, and for the purpose of providing any sums to be paid out of the Development Fund of the Federation or the Consolidated Revenue Fund of the Federation as aforesaid, moneys may, if required, from time to time, be borrowed in the manner provided in the Treasury Bills Act, or the Local Loans (Registered Stock and Securities) Act (but without prejudice to any other method of raising the moneys) without any authorization of the National Assembly other than this section and any moneys so borrowed shall be paid into the Consolidated Revenue Fund of the Federation.
- 2) The Minister may, if he thinks it fit so to do, create and issue to the Fund, the Bank or the Association, in such form as he thinks fit, any such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 5 of Article III of the Fund Agreement, by section 12 of Article V of the Bank Agreement and by paragraph (e) of section 2 of Article II of the Association Agreement (which sections relate to the acceptance by the Fund, the Bank or the Association, as the case may be, of notes or similar obligations in place of currency), and the sums payable under such notes or obligations so created and issued shall be charged on the Consolidated Revenue Fund of the Federation.
- 3) Any sums received by the Federal Government from the Fund (other than sums received by reasons of the operations or transactions under Article V of the Fund Agreement), any sums received by the Federal Government from the Bank or the Corporation), any sums received by the Federal Government from

the Bank or the Corporation on account of its subscriptions to the capital stock thereof and any sums received by the Federal Government from the Association on account of its subscription therein or of supplementary resources provided by it, shall be paid into the Consolidated Revenue Fund of the Federation.

5. Status and immunities of organisations

- 1) The juridical personality of the Fund, the Bank, the Corporation and the Association is recognised by the Federation and in particular the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings; the provision regarding judicial process contained in section 3 of Article IX of the Fund Agreement, in section 3 of Article VIII of the Bank Agreement, in section 3 of Article VI of the Corporation Agreement and in section 3 of Article VI of the Corporation Agreement and in section 3 of Article VIII of the Association Agreement respectively, shall and in section 3 of Article VIII of the Association Agreement respectively, shall have the force of law in Nigeria.
- 2) Without prejudice to the powers conferred by section 3 of the Diplomatic Immunities and Privileges Act, the President shall by order make such provisions as are necessary for carrying into effect any of the provisions of the Fund Agreement, the Bank Agreement, the Corporation Agreement and the Association Agreement, relating to the status, immunities and privileges of the Fund, the Bank, the Corporation and the Association and their respective governors, executive directors, directors, alternates, officers and employees, or any of the provisions of the Fund Agreement as to the unenforceability of exchange contracts.

6. Certain provisions not to take effect

For the avoidance of doubts as to the effect of certain provisions of this Act, all references to, and all acts authorised to be done in relation to the Association in this Act, shall not have effect or be done, as the case may be, unless and until the President declares by notice in the Federal Gazette that the Association is established and thereafter all such references and all such acts shall have effect or be done, as the case may be, as from such day as the President shall declare by the same or a subsequent notice in the Federal Gazette.

PART III

GUIDELINES

Chapter 26

Central Bank of Nigeria Prudential Guideline for Deposit Money Banks in Nigeria, 2010

CONTENT

- 1.0 Introduction
- 2.0 Definitions
- 3.0 Risk management
 - 3.1 Credit policy duly approved board of directors
 - 3.2 Limit on exposure to a single obligor/connected lending
 - 3.3 Credit concentration policies
 - 3.4 Exposure to directors and their related interests
 - 3.5 Disclosure of insider-related interests
 - 3.6 Bankers acceptances and commercial papers
 - 3.7 Basic information on borrowers
 - 3.8 Minimum information on credit print-out
 - 3.9 Minimum contents of credit files
 - 3.10 Margin lending
 - 3.11 Revaluation of fixed assets
 - 3.12 Foreign exchange risk – Net Open Position (NOP) limit
 - 3.13 Liquidity ratios
 - 3.14 Statutory reserve
 - 3.15 Cash reserve ratio
 - 3.16 Capital adequacy ratio
 - 3.17 Credit rating of counter party/obligor
 - 3.18 Credit rating of bank
 - 3.19 Reconciliation of inter-branch accounts and settlement of suspense account entire:
- 3.20 Foreign borrowing for on-lending by Nigeria banks
- 3.21 Policies and procedure for write-off of fully provided credit facilities
- 3.22 Misreporting
- 3.23 Transitional provisions
- 4.0 Corporate governance

- 4.1 Tenure of non-executive directors
- 4.2 Tenure of external auditors
- 5.0 Know Your Customer and Anti-money Laundering
 - 5.1 Know your customer
 - 5.2 Anti-money laundering measures
 - 5.3 Record retention
 - 5.4 Correspondent banking
 - 5.5 Suspicious transaction
- 6.0 Project Financing
 - 6.1 Policy duly approved by Board of Directors
 - 6.2 Credit appraisal of projects
 - 6.3 Assessment of projects
 - 6.4 Monitoring of projects
 - 6.5 Maximum duration of loan
 - 6.6 Moratorium
- 7.0 Object finance, Real estate and Commercial Real Estate
 - 7.1 Policy duly approved by Board of Directors
 - 7.2 Purpose of loan
 - 7.3 Monitoring of real estate market
 - 7.4 Duration of loan
- 8.0 Small and Medium Enterprises Financing
 - 8.1 Policy Duly Approved By Board of Directors
 - 8.2 Source, capacity of payment and cash flow based lending
 - 8.3 Securities
- 9.0 Agriculture Financing
 - 9.1 Policy duly approved by Board of Directors
 - 9.2 Repayment capacity of the borrower
 - 9.3 Natural calamities
 - 9.4 Insurance of agriculture produce
 - 9.5 Proper utilization of loans
 - 9.6 Valuation of security
 - 9.7 Cash flow based facilities
- 10.0 Microfinance loans
- 11.0 Retail financing
 - 11.1 Minimum conditions for retail financing
- 12.0 Loan loss provisioning
 - 12.1 Credit portfolio classification system for facilities other than 'specialized loans'

- 12.2 Provision for non-performing facilities other than ‘specialized loans’ as defined by the guidelines
- 12.3 Provision for non-performing facilities under ‘specialized loans’
- 12.4 Adapting prudential guideline to IFRS
- 12.5 Credit portfolio disclosure requirement
- 12.5 Disclosure requirement for ‘specialized loans’
- 12.7 Interest accrual
- 12.8 Classification of other assets
- 12.9 Revolving and overdraft facilities
- 12.10 Facilities without approval
- 12.11 Off balance sheet engagement
- 12.12 Provision requirement for specialized loans
- 12.13 Collateral adjustment and provisioning for lost facilities
- 12.14 Regulator’s power over adequacy of provisioning
- 12.15 Update of loan loss provisioning guidelines
- 12.16 Dynamic provision
- 13.0 Financial soundness indicators and financial ratios
- Annexure 1, Annexure 2, Annexure 3, Annexure 4, Annexure 5
- Annexure 6, Annexure 7, Annexure 8, Annexure 9, Annexure 10

Glossary

1.0 INTRODUCTION

Background

The Nigerian banking sector witnessed dramatic growth post consolidation (2005) and the developments posed a lot of challenges for the industry and regulation. The initial perceptions that the Nigerian banking system was sound and insulated from global financial crisis were misplaced. The factors that led to creation of extremely fragile financial system that was tipped into crisis by the global financial meltdown include:

1. Macro-economic instability caused by large and sudden capital outflows;
2. Major failures in corporate governance at banks;
3. Lack of investor and consumer sophistication;
4. Inadequate disclosure and transparency about financial position of banks;
5. Critical gaps in prudential guidelines (current prudential guidelines was issued in 1990) and
6. Uneven supervision and enforcement

In addressing the above listed challenges, the CBN introduced a Four (4) Pillar Reform Programme in 2010 tailored towards:

- Enhancing the quality of banks;
- Establishing financial stability;

- Enabling healthy financial sector evolution; and
- Ensuring the financial sector contributes to the real economy

As part of the initiative to enhance the quality of the banks, the CBN undertook a review of the prudential guidelines. In this regard, the revised Prudential Guidelines aim to address various aspects of banks' operations, such as risk management, corporate governance, KYC and anti-money laundering/counter financing of terrorism and loan loss provisioning. The guidelines also aim to address the peculiarities of different loan types and financing to different sectors.

Loan loss Provisioning Guidelines:

The loan loss provisioning guidelines which form part of the enhanced Prudential Guidelines provide guidance on recognition and measurement of loans, establishment of loan loss allowances, credit risk disclosure and related matters. It sets out CBN's views on sound loan provisioning and disclosure practices for deposit money banks in Nigeria.

The guidelines also serve as a basic framework for evaluation of banks' provisioning policies and practices. The objectives of the enhanced provisioning guidelines are to:

- 1) Promote enhanced provisioning policies and practices, which are consistent with sound risk management practices for Nigerian Banks;
- 2) Ensure that provisioning guidelines support the life cycle and gestation periods of the various specialized loans;
- 3) Provide a framework for ensuring that the current provisioning guidelines are counter-cyclical; and
- 4) Provide framework for "Haircuts" adjustments for LOST Facilities.

These prudential guidelines should be regarded as minimum requirements and licensed banks are encouraged to implement more stringent policies and practices to enhance mitigation of risks.

SAMUEL A. ONI

DIRECTOR OF BANKING SUPERVISION

2.0 DEFINITIONS

- a) Commodities Finance refers to structured short-term lending to finance inventories or receivables of exchange-traded commodities (e.g. crude oil, metals, crops or farm produce), where the exposure will be repaid from the proceeds of the sale of the commodity and the borrower has no independent capacity to repay the exposure.
- b) Retail financing means any financing allowed to individuals for meeting their personal family or household needs. The facilities categorized as retail financing are as follows:

- (i) Credit Cards mean cards which allow a customer to make payments on credit. Supplementary credit cards shall be considered part of the principal borrower for the purposes of these guidelines.
- (ii) Auto Loans mean the loans to purchase the vehicle for personal use.
- (iii) Housing Finance means loan provided to individuals for the purchase of residential house/apartment/land. The loans availed for the purpose of making improvements in house/apartment / land shall also fall under this category.
- (iv) Personal loans mean the loans to individuals for personal needs.
- (v) Any other exposure to an individual borrower as may be categorized by the CBN.
- c) Forced Sale Value (FSV) means the value which fully reflects the possibility of price fluctuations and can currently be obtained by selling the collateralized assets in a forced / distressed sale conditions.
- d) Project Finance is a method of funding in which the lender looks primarily to the revenues generated by a single project, both as a source of repayment and as security for the exposure. This type of financing is usually for large, complex and expensive installations. It is principally a form of 'Non-recourse' or 'Limited Recourse' financing, where the lenders base their credit decision solely or primarily on the cash flows of the project, with respect to repayment of the project debts. Projects might include:
 - (i) A road, including toll road, fly over, bridge project;
 - (ii) A mass transit, urban rail project;
 - (iii) A rail-bed, stations system, rail freight, passenger services project; A telecommunication local services, long distance and value added project;
 - (iv) A power generation project;
 - (v) A power transmission or distribution project by laying a network of new transmission or distribution lines;
 - (vi) A natural gas exploration and distribution project.
 - (vii) A Liquefied Petroleum Gas extraction, distribution and marketing project;
 - (viii) An LPG import terminal, distribution and marketing project;
 - (ix) An LNG (Liquefied Natural Gas) terminal, distribution and marketing project;
 - (x) A water supply, irrigation, water treatment system, sanitation and sewerage system or solid waste management system project;
 - (xi) A dam, barrage, canal project;
 - (xii) A primary and secondary irrigation, tertiary (on-farm) irrigation project;
 - (xiii) A port, channel dredging, shipping, inland waterway, container terminals project;
 - (xiv) An airport;

- (xv) A petroleum extraction, refinery, pipeline project;
- (xvi) Any other infrastructure project of similar nature, as may be defined from time to time by CBN.
- e) Specialized loans include the following:
 - 1) Agricultural Finance which are categorized as Farm Credit and Non- farm credit.
 - (A) Farm Credit includes:
 - (i) Production Loans for inputs like seeds, fertilizers, pesticides, etc. Production Loans also include working capital finance to meet expenses of various natures attributable to farming.
 - (ii) (Farm Development Finance (including finance for improvement of agricultural land, orchards, nurseries, agro allied industries, bakeries, animal husbandry, horticulture etc.) and construction of storage facilities, etc. for storage of seed, raw agriculture/farm produce.
 - (iii) Finance for the purchase of agricultural machinery and equipment like tractors, threshers, etc.
 - (iv) Non-fund based facility (e.g. letters of credit) for procurement/import of agricultural supplies, etc., by corporate & non corporate farmers.
 - (B) Non-farm credit includes financing for livestock such as dairy, poultry and fisheries etc. Agriculture Financing shall not include loans to traders and intermediaries engaged in trading/processing of agriculture commodities. Such lending would be covered under Prudential Guidelines for Corporate/ Commercial Banking or SME Financing. However, agricultural financing can be extended to entities (including corporate farms, partnerships and individuals) engaged in farming activity as well as processing, packaging and marketing of mainly their own agricultural produce, provided 75% of the agriculture produce being processed, packaged and marketed should be produced by the above-mentioned entities themselves.
 - 2) Mortgage loan is a loan secured by real property through the use of a document which evidences the existence of the loan and the encumbrance of that realty through the granting of a mortgage which secures the loan
 - 3) Margin loan is a loan that allows the customer to finance against shares. The term margin refers to the difference between the market value of the shares and the cost of shares. The primary and secondary sources of repayment are from the sale of the securities purchased.
 - 4) Object Finance is a method of funding the acquisition of physical assets (e.g. ships, aircraft, satellites, railcars, and fleets etc) where the repayment of the exposure is dependent on the cash flows generated by the specific assets that have been financed and pledged or assigned to the lender.

- 5) Project Finance is a form of ‘Non-recourse’ or ‘Limited Recourse’ financing, where the lenders base their credit decision solely or primarily on the cash flows of the project, with respect to repayment of the project debts.
- 6) Real Estate Loan also known as “Income producing real estate” is a loan provided for funding of real estate (such as, office buildings to let, retail space, multifamily residential buildings, industrial or warehouse space, and hotels) where the prospects for repayment and recovery on the exposure depend primarily on the cash flows generated by the asset. The primary source of these cash flows would generally be lease or rental payments or the sale of the asset.
- 7) Commercial Real Estate Loan also known as “High-volatility commercial real estate” is the financing of commercial real estate that exhibits higher loss rate volatility (i.e. higher asset correlation) compared to other types of specialized lending.
- 8) SME Loan is a loan provided to a Small and medium enterprise (SME). A small and medium enterprise is defined as any manufacturing enterprise with a maximum turnover of ₦500 million and assets of ₦250 million (excluding land and working capital).

3.0 RISK MANAGEMENT

3.1 Credit policy to be duly approved by board of directors:

Banks should prepare a comprehensive credit policy duly approved by their Board of Directors. The policy should, inter alia cover loan administration, disbursement and appropriate monitoring mechanism etc. The policy should be reviewed at least every three years.

3.2 Limit on exposure to a single obligor/ connected lending:

- a) (a) The total outstanding exposure by a bank to any single person or a group of related borrowers shall not at any point in time exceeds 20% of the bank’s shareholders fund unimpaired by losses.
- b) (b) $33\frac{1}{3}\%$ of a bank’s off balance sheet engagements shall be applied in determining the bank’s statutory limit to a single obligor as per 3.2(a) above.
- c) (c) The total outstanding exposure (on and off balance sheet) by a bank to all tiers of government and their agencies shall not at any point in time exceed 10% of the total credit portfolio.
- d) (d) A large exposure is any credit to a customer or a group of related borrowers that is at least 10% of a bank’s shareholders fund unimpaired by losses.
- e) (e) Aggregate large exposures in any bank should not exceed eight times the shareholders fund unimpaired by losses.

3.3 *Credit Concentration Policies:*

- a) Banks should put in place effective internal policies, systems and controls to identify, measure, monitor, and control their credit risk concentrations. The policies should be approved by the Board of Directors and should cover the different forms of credit risk concentrations to which a bank may be exposed. Such concentrations include:
 - (i) Significant exposures to an individual counterparty or group of related counterparties;
 - (ii) Credit exposures to counterparties in the same economic sector or geographic region;
 - (iii) Credit exposures to counterparties whose financial performance is dependent on the same activity or commodity; and
 - (iv) Indirect credit exposures arising from a bank's Credit Risk Mitigation (CRM) activities (e.g. exposure to a single collateral type or to credit protection provided by a single counterparty).
- b) A bank's framework for managing credit risk concentrations should be clearly documented and should include a definition of the credit risk concentrations relevant to the bank and how these concentrations and their corresponding limits are calculated. Limits should be defined in relation to a bank's capital, total assets or, where adequate measures exist, its overall risk level.
- c) A bank's management should conduct periodic stress tests (on a quarterly) of its major credit risk concentrations and review the results of those tests to identify and respond to potential changes in market conditions that could adversely impact the bank's performance.
- d) All banks should put in place policies on credit Portfolio Plan as part of their credit risk management which should be approved by their respective boards. The plan shall specify the target portfolio size as well as portfolio distribution by industry, economic sectors, Business Units, etc. The portfolio plan shall at a minimum consider the following:
 - (i) Macro-economic climate including fiscal and monetary policy guidelines
 - (ii) Bank policies on its target market
 - (iii) Minimum risk acceptance criteria definition for each bank
 - (iv) Bank's policies on concentration risks by industry, market sector, and obligor
 - (v) Historical portfolio and experience of each bank, etc.
- e) In defining the portfolio concentration limits for industries or sectors, banks shall adopt the standard industry classification (SIC) definition recently developed and released by the CBN.

- f) Banks should review their credit portfolio plan on a quarterly basis to ensure that the plan is still reflective of current market circumstances. In the event of Material Adverse Changes affecting the macro-economic environment or particular sectors, industries or regions, appropriate review and mitigation strategies should be performed.
- g) The CBN will assess the extent of a bank's credit risk concentrations, how they are managed, and the extent to which the bank considers them as part of subjective factors in making specific provisions. Non-compliance with a bank's established policies on credit concentration and monitoring shall form a basis for Supervisory actions which may include additional loan loss provisions under sections 12.1 (e) (1) (ii); 12.1 (e) (2) (ii) and 12.1 (e) (3) (ii). The subjective factors shall also be extended to provisions on specialized loans.

3.4 Exposures to Directors and their related interests:

- a) A significant shareholding is defined as a holding of at least 5% (individually or in aggregate) of a bank's equity.
- b) Director, insider and significant shareholder credit exposure should be fully disclosed by banks in their financial statements and returns prescribed by the Central Bank of Nigeria.
- c) Insiders include directors, significant shareholders and employees. According to BOFIA, the term "director" includes director's wife, husband, father, mother, brother, sister, son, daughter and their spouses.
- d) Banks should ensure that their credit policies specifically address lending to directors as part of related parties or insiders lending policies.

3.5 Disclosure of Insider-related credits in financial statements:

- a) Insider-related credits include transactions involving shareholders, employees, directors and their related interests.
- b) The disclosure required to be presented in the financial statements is as follows:
 - (i) The aggregate amount of insider-related loans, advances and leases outstanding as at the financial year end should be separately stated in a note to the accounts and the non-performing component further analysed by security, maturity, performance, provision, interest-in suspense and name of borrowers.
 - (ii) Notes to the accounts on guarantees, commitments and other contingent liabilities should also give details of those arising from related-party transactions.
 - (iii) The external auditors and audit committees should include in their report, their opinion on related-party credits.

- c) The requirements of Sections 3.4 and 3.5 do not apply to credits extended to employees under their employment scheme of service, or to shareholders whose shareholding and related interests are less than 5% of the bank's paid up capital as at the date of the financial report or to public limited liability companies in which a director has an interest that is less than 5%.

3.6 Bankers Acceptances and Commercial Papers:

The issuance and treatment of BAs and CPs shall be in line with the CBN's "Guidelines on the issuance and treatment of Bankers Acceptances and Commercial Papers" issued on November 18, 2009 or as may be advised by the CBN from time to time.

3.7 Basic Information on Borrowers:

- a) Banks shall not approve and/or provide any exposure (including renewal, enhancement and rescheduling/restructuring) until and unless the Loan Application Form (LAF) designed by banks is completed.
- b) The Loan Application Form shall contain such information as the bank may require to evaluate the application, which may include recent audited financial statements/management accounts, projected cash flows, records of past bank accounts.
- c) All banks must show evidence of making enquiries or obtain credit report from at least two (2) credit bureaus before granting any facility to their customers. The result of the enquiry should be documented in the credit file of the customer. In addition, compliance with the CBN circular BSD/DIR/GEN/CIR/04/014 issued on 30 April 2010 is mandatory.
- d) All banks should also provide evidence that a search has been conducted on the borrower in the CBN's Credit Risk Management System (CRMS) database.

3.8 Minimum information on credit print-outs:

All banks should provide the following minimum details in their credit print-outs:

- i) Account number of customer;
- ii) Name of customer;
- iii) Type of facility;
- iv) Date facility was granted;
- v) Authorized limit of facility;
- vi) Original expiry date;
- vii) Balance on account;
- viii) Date of last lodgement or credit operation by the customer; and
- ix) Sector/Industry/Type/ value of security pledged.

3.9 Minimum Contents of Credit files:

a) Every bank shall maintain credit files whether in electronic, print or other form, on all its borrowers which shall contain adequate and timely information on the credit-worthiness of the borrowers:

- i) to enable proper and effective monitoring of credit facilities extended by the bank; and
- ii) to enable examiners, as well as the bank's internal and external auditors, to have immediate and complete factual information from which they can form an objective appraisal of the quality of the credit facilities.

b) A bank shall maintain basic information (including those set out in the Annexure 1, where applicable) on the following to enable an objective evaluation of the quality of each facility:

- i) the borrower;
- ii) the credit facility;
- iii) the appraisal of the credit application;
- iv) the conduct and status of the account;
- v) an offer letter conditions for draw down; and
- vi) evidence of acceptance of offer by the borrower.

3.10 Margin lending:

All banks involved in margin lending shall comply with the guidelines issued by the CBN/ Securities and Exchange Commission (SEC) on Margin Lending for banks, brokerage firms, asset managers and other financial institutions.

3.11 Revaluation of fixed assets:

- i) Prior approval of the CBN must be obtained by any bank before the recognition of the revaluation surplus on fixed assets in its books, taking into consideration that:
- ii) The basis of the underlying fixed assets valuations must be stated, and the valuation made by qualified professionals whose identity and qualifications are stated;
- iii) The difference between the market and historic values of the eligible fixed assets being revalued shall be discounted by 55%;
- iv) The revaluation of fixed assets is applicable to own premises only; and
- v) The revaluation of fixed assets (owned premises only) is permissible within a minimum period of seven years after the date of the purchase of the asset or the last revaluation.

3.12 Foreign Exchange Risk - Net Open position limit:

All banks should comply with Net Open Position (NaP) limit as advised by the Central Bank of Nigeria from time to time.

3.13 liquidity ratios:

- a) The following liquid assets are admissible for computation of liquidity ratio:
 - i) Cash;
 - ii) Balance held with the CBN;
 - iii) Net balances held with banks within Nigeria;
 - iv) Nigerian treasury bills;
 - v) Nigerian treasury certificates;
 - vi) CBN registered certificates;
 - vii) Net interbank placement with other banks;
 - viii) Net placement with discount houses;
 - ix) Total certificate of deposits;
 - x) FGN bonds;
 - xi) Stabilization securities;
 - xii) Net Certificate of Deposit held under 18 month to maturity; and
 - xiii) Any other asset as prescribed by the CBN from time to time.
- b) The CBN shall prescribe the minimum liquidity ratio for banks in Nigeria from time to time in line with its monetary policy's directions.
- c) A bank may be considered illiquid if:
 - i) the bank's current account with the CBN is overdrawn and not covered by the next working day consecutively for five working days within a month;
 - ii) the bank suffers clearing operation deficits for 5 consecutive days i.e. there was adverse clearing settlement position without adequate cover to the extent that recourse had to be made to the clearing collateral;
 - iii) the bank is unable to pay maturing obligations for 5 consecutive days; and
 - iv) the bank is a net taker of interbank deposit of up to 25% of its total deposits for a consecutive period of 90 days
- d) The CBN as part of its regulatory oversight function can take the following actions over a bank considered illiquid:
 - i) invite management for a discussion on its plan to improve liquidity;
 - ii) request the bank to realize assets that do not qualify for inclusion in liquidity ratio computation;
 - iii) conduct spot check to investigate the problem of the bank;
 - iv) advise the bank to divest from subsidiaries or related companies;
 - v) change management and/or board;
 - vi) solicit for short term liquidity support for the bank from Nigeria Deposit Insurance Corporation (NDIC);
 - vii) suspend the bank from clearing until it makes good its clearing position;
 - viii) provide financial support and other lender of last resort actions

3.14 Statutory reserve:

Every bank shall maintain a reserve fund appropriated out of its net profits for each year (after due provision made for taxation) and before any dividend is declared as follows:

Where the amount of the reserve funds is;

- i) less than the paid-up share capital, transfer to the reserve fund a sum equal to not less than 30% of the net profits; and
- ii) equal to or in excess of the paid-up share capital transfer to the reserve fund a sum equal to not less than 15% of the net profit;

Provided that no transfer under this subsection shall be made until all identifiable losses have been made good.

3.15 Cash reserve ratio:

The CBN shall prescribe the minimum cash reserve ratio for banks in Nigeria from time to time in line with its monetary policy's directions.

3.16 Capital adequacy ratio

- a) The minimum ratio of capital to total risk-weighted assets shall remain at 10% as prescribed in the circular BSD/II /2003 issued on August 4, 2003. Furthermore, at least 50% of a bank's capital shall comprise paid-up capital and reserves, while every bank shall maintain a ratio of not less than 1: 1 0 between its adjusted capital funds and total credit net of provisions. However, banks are encouraged to maintain a higher level of capital commensurate with their risk profile.
- b) The existing definition of the constituents of capital, deductions from total qualifying capital and restrictions within and between primary (Tier 1) and supplementary (Tier 2) capital are generally consistent with the Basel Accord.
- c) Tier 2 capital is limited to 100% of Tier 1 capital.
- d) The general provision will be part of Tier 2 Capital where the bank's specific provision for bad and doubtful debts has been made to the satisfaction of the CBN. However, such general provision will be restricted to a maximum of 1.25% of the risk weighted assets.
- e) Deferred tax assets are considered as intangible assets for capital adequacy purposes and should be deducted from total capital and reserves in arriving at total Tier 1 capital.
- f) Based on a level of capital adequacy ratio below the acceptable limit, a bank may be classified as follows:
 - i) Under capitalised
 - ii) Significantly under-capitalised;
 - iii) Critically under-capitalised; and
 - iv) Insolvent

g) The conditions and corresponding supervisory actions for banks with the classifications under (c) above are stipulated below:

Condition of a bank Restriction/supervisory Action

Under capitalised banks (i.e. banks with Capital adequacy ratio -CAR- greater than or equal to 5% but less than the prescribed minimum level of 10% i)

Conduct special examination;

ii) Restrict dividend distribution;

iii) Restrict investment in other

iv) subsidiaries/related companies;

v) Restrict investment in fixed assets

Significantly under capitalised banks (i.e. Banks with CAR less than 5% but I

equal to or greater than 2% i) Restrict new lending to recoveries (zero based lending);

ii) Request for business plan on how fresh funds are to be injected into the bank;

iii) CBN to review business plan within two weeks and communicate to the bank its acceptability or otherwise;

iv) The CBN should make the final capital call on the bank within 4 months from time of acceptance of the business plan;

v) Within two months after the final capital call, the CBN may take over management and control of the bank and hand it over to NDIC;

vi) The CBN may appoint the NDIC which may consider the following options;

a) Recapitalisation and restructuring by new investors;

b) Create incentives for healthy banks to take over the sick one;

c) Encourage private debt factoring companies to acquire the bad debts of the bank; and

d) Recommend the revocation of licence

Critically undercapitalized (i.e. banks with CAR less than 2%)

Insolvent banks (i.e. banks that have negative CAR) Take over management and control and/or revoke the licence

3.17 Credit rating of counter party/obligor and sector:

a) All banks should put in place an internal rating policy/model and conduct internal credit ratings for all counter parties/ obligors and sectors.

b) In measuring credit risk of loans and advances to customers and to banks at a counterparty level, banks must ensure that the following components are considered:

i) character and capacity of the obligor to payor meet contractual obligations;

ii) current exposures to the counter party/obligor and its likely future developments;

iii) credit history of the counter party/ obligor; and

iv) the likely recovery ratio in case of default obligations - value of collateral and other ways out.

3.18 Credit rating of bank:

- a) It shall be mandatory for all banks to have themselves credit rated by a credit rating agency.
- b) The credit rating should be on a regular basis i.e. credit rating should be updated on a continuous basis from year to year, within six months from the date of close of each financial year and the rating report complete in all respects be submitted to the CBN. Further, banks shall disclose their credit rating prominently in their published annual reports.

3.19 Reconciliation of inter-branch accounts and treatment of suspense account entries:

- a) All entries outstanding in the Inter-Branch Accounts (by whatever name called) and/or suspense Account must be reconciled / cleared and taken to the proper head of account within 3 months from the date the entry is made in the above-named accounts.
- b) All outstanding items in the Inter-Branch Accounts which are not reconciled/ cleared within 3 months shall be classified in accordance with section 12.9.
- c) Banks shall institute an effective internal control system for the operations of Inter-Branch and Suspense Accounts, which ensures reconciliation / clearing of the entries in shortest possible time and also clearly fixes the responsibilities on the official(s) for neglecting the timely reconciliation and clearance.

3.20 Foreign borrowing for on-lending by Nigerian banks:

All banks shall be required to comply with the CBN circular BSD/DO/CIR/VOL.I/2001/22, "Guidelines for foreign borrowing for on-lending by Nigerian Banks", dated November 29, 2001.

3.21 Policies and procedures for write-off of fully provided credit facilities:

- a) The facility must have been fully provided for in line with the loan loss provisioning guidelines and must be in bank's book for at least one year after full provision.
- b) There should be evidence of board approval.
- c) If the facility is insider or related party credit, the approval of CBN is required.
- d) The fully provisioned facility must be appropriately disclosed in the audited financial statement.

3.22 Misreporting

All Banks shall refrain from adopting any measures or practices whereby they would either artificially or temporarily show an ostensibly different position of bank's financial performance or position as given in their financial statements. Particular care shall be taken in showing their deposits, minimum capital

requirement, non-performing loans/assets, provisioning, profit, inter-branch and inter-bank accounts, etc.

3.23 Transitional Provisions:

All banks that are currently in breach of the prudential requirements especially provisions of section 3.17 are given up to 24 months from the effective date of these guidelines to regularize.

Detailed plan for regularization should be forwarded to the CBN within 3 months from the effective date of these guidelines and subsequently updated every quarter

4.0 CORPORATE GOVERNANCE

As part of the efforts to promote good corporate governance in the Nigerian Banking Industry, the CBN issued Code of Corporate Governance for Banks in Nigeria with effective date of April 3, 2006. Compliance with the provisions of the code is mandatory for all banks.

In furtherance of the on-going banking reforms, the following guidelines will address some corporate governance issues not specifically addressed in the initial code of corporate governance. These include:

- a) Chief Executive Officers, CEO of banks shall serve a maximum tenure of 10 years.
- b) All CEOs who would have served for 10 years by July 31, 2010 shall cease to function in that capacity and shall hand over to their successors.
- c) Where a bank is a product of merger, acquisition, take-over or any other form of combination, the ten years period shall include the pre and post combination service years of a CEO provided that the bank in which he previously served as CEO was part of the new bank that emerged after the combination.
- d) Any person who has served as CEO for the maximum tenure in a bank shall not qualify for appointment in his former bank or subsidiaries in any capacity until after a period of 3 years after the expiration of his tenure as CEO.
- e) The Governor/Deputy Governors of the CBN and the Managing Director/CEO and Executive Directors of the Nigeria Deposit Insurance Corporation, NDIC shall not be eligible for appointment in any capacity in banks until after the expiration of 5 years from the date of their exit from the CBN or NDIC as the case may be.
- f) The Departmental Directors of the CBN and the NDIC shall not be eligible for appointment in any capacity in banks and their subsidiaries under the supervision of the CBN and NDIC until after the expiration of 3 years from the date of their exit from the CBN or NDIC as the case may be.

g) Henceforth, all banks shall reflect the provisions of these guidelines in the terms of engagement of their CEOs.

4.1 Tenure of Non-Executive Directors:

In order to ensure both continuity and injection of fresh ideas, non- executive directors should not remain on the board of a bank continuously for more than 3 terms of 4 years each, i.e. 12 years.

4.2 Tenure of External Auditors

The tenure of external auditors in a given bank shall be for a maximum period of ten years from date of appointment after which the audit firm shall not be reappointed in the bank until after a period of another 10 years

5.0 KNOW YOUR CUSTOMER AND ANTI-MONEY LAUNDERING MEASURES

5.1 Know your customer:

All banks shall be required to comply with the principles and procedures of Know Your Customer (KYC) and relevant circulars as issued by the CBN from time to time.

5.2 Anti-money laundering measures:

All banks shall be required to comply with the Anti-money Laundering Act 2004 (or any amendments to this Act) and relevant circulars as issued by the CBN from time to time.

5.3 Record retention:

The records of transactions and identification data etc. maintained by banks occupy critical importance as far as legal proceedings are concerned. Prudence demands that such records may be maintained in systematic manner with exactness of period of preservation to avoid any set back on legal and reputation fronts. Banks shall therefore, maintain, for a minimum period of five years, all necessary records on transactions, both domestic and international. Banks shall, however, retain those records for longer period where transactions relate to litigation or are required by the Court of law or by any other competent authority.

5.4 Correspondent banking:

- (a) Banks shall gather sufficient information about their correspondent banks to understand fully the nature of their business. Factors to consider include:
 - i) Know your customer policy (KYC)
 - (ii) Information about the correspondent bank's management and ownership
 - (iii) Major business activities
 - (iv) Their location
 - (v) Money laundering prevention and detection measures
 - (vi) The purpose of the account

- (vii) The identity of any third party that will use the correspondent banking services (i.e. in case of payable through accounts)
- (viii) Condition of the bank regulation and supervision in the correspondent's country

5.5 Suspicious transactions:

Banks should pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. Examples of such suspicious transactions are listed at annexure 7. However, these are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help the relevant authorities in inspection and investigation.

The existing list of examples of suspicious transactions as annexure 7 is supplemented with the enclosed list of characteristics of financial transactions that may be a cause for increased scrutiny as annexure 8.

6.0 PROJECT FINANCING:

6.1 Policy to be duly approved by Board of Directors:

Banks shall prepare a comprehensive project financing policy duly approved by their Board of Directors. The policy may be part of the overall credit policy of a bank and should, *inter alia*, cover loan administration, disbursement and appropriate monitoring mechanism etc. The policy should be reviewed at least every three years.

6.2 Credit Appraisal of Projects:

A thorough credit appraisal of projects by banks is of utmost importance in order to identify the project risks, and to ascertain the fact that the project will function as per plans. Assessment of the financial and economic viability of the project should also be carried out to determine adequacy of the project cash flows with respect to repayment capacity of the project debts, as well as ensuring a satisfactory rate of return on the funds proposed to be lent. Banks are, therefore, encouraged to develop the requisite expertise to conduct a thorough appraisal of the proposed project, and may constitute appropriate special Divisions/ Department for project financing or outsource project feasibility assessment.

6.3 Assessment of Projects:

Projects particularly Infrastructure Projects usually go through development, construction, start-up, and operation stages. Banks should, therefore, assess these stages separately for risk mitigation. While some of the guidelines in this

regard are provided below, banks may put in place additional safeguards appropriate to their risk assessment:

Development Phase: Keeping in view the higher risk in this phase, the funding needs should be met primarily through capital from the main sponsors only. However, if the lenders decide to provide funding during this phase of the project, they should critically evaluate the possibility of various risks, including those arising from unclear government policies, if any, and their possible impact on the viability of the project.

Construction and Start-up Phase: In this phase, the major risk is that the construction may not be completed on time, or may have large cost overruns. A project may fail to reach its completion for many reasons, ranging from technical design flaws to mismanagement of the project, financial problems, or changes in government regulations. Therefore, the lending banks are advised to adequately safeguard their interests and stress upon the project companies to also hedge such risks by opting for fixed-price, certain-date construction contracts {including turnkey contracts}, and built-in provisions for liquidated damages if the contractor fails to perform, along with obtaining insurance cover for certain areas of the project.

- 1) **Responsibility of Assuming Completion Risk:** As lenders cannot control the construction process, therefore, banks are advised to negotiate that risks during completion phase of the project be the responsibility of the project company, its sponsors, contractors, equipment suppliers, and insurers.
- 2) **Physical and Financial Completion of Projects:** In order to protect against the risk of physical and financial non completion of the infrastructure project, banks are advised to closely observe following issues for risk mitigation:
 - i) **Project Funds Agreement (PFA):** The most common threat to physical completion of the project is cost overruns, which affects the project's financial rate of return, and if these cost overruns are not financed through additional financing, the same may even lead to abandonment of the project. Therefore, to ensure that unexpected costs do not jeopardize the project's completion, creditors and minority investors may insist on a commitment for standby financing as part of the initial financial package. This may be provided by sponsors through a contractual agreement, i.e. Project Funds Agreement (PFA), which is a standby subordinated loan or equity, wherein sponsors may either provide or arrange the requisite funds.
 - ii) **Financial Completion Agreement (FCA):** It is pertinent to emphasize that a new project may reach physical completion but may not become self-sustaining for a number of reasons, such as supply problems or weak market demand. If financial completion is not achieved, profitability will suffer, and

the project is likely to encounter debt-service difficulties. Project documentation, therefore, may include a Financial Completion Agreement (FCA), which specifies, in contract form, the initial financial projections of the project against which creditors and investors are willing to invest funds. Under a Financial Completion Agreement, the sponsors typically commit to provide subordinated loans or additional equity to the project until the agreed financial performance is achieved. By requiring sponsors to ensure project financial completion, lenders greatly reduce the default risk of the project. The lenders may, at their own discretion, require the sponsors to arrange suitable insurance cover, if available, for covering such risk.

- iii) Project Insurance: To ensure fulfilment of Obligations by the sponsors, their obligations under PFA/FCA shall be backed-up by a letter of credit, bond or guarantee from a creditworthy third party. However, for mitigating force majeure that cannot be contractually allocated, banks are advised to call for purchase of insurance, wherever possible, by the sponsors, so as to mitigate both direct and indirect types of force majeure.

6.4 Monitoring of projects:

Banks shall establish a mechanism for continuous monitoring of project implementation to ensure proper utilization of the credit disbursed to the company. For this purpose, proper scrutiny/audit shall be undertaken of the Project Account(s).

6.5 Maximum duration of loan:

Banks shall decide the duration of the loan and this should take into cognizance the gestation period and peculiarities of each project.

6.6 Moratorium

Where moratorium is available for payment of principal and interest, payment of principal and interest becomes due only after the moratorium period is over.

7.0 OBJECT AND REAL ESTATE FINANCING:

7.1 Policy to be duly approved by board of directors:

Banks shall prepare a comprehensive object financing policy and real estate financing policy duly approved by their Board of Directors. The policy may be part of the overall credit policy and procedures of a bank. The policy should be reviewed at least every three years.

7.2 Purpose of loans:

Banks shall ensure that the loans have been properly utilized and for the same purposes for which they were acquired / obtained. The banks should develop and implement an appropriate system for monitoring the utilization of loans.

7.3 Monitoring of Real Estate Market:

Banks are encouraged to setup a separate department for real estate loans. The department among other things is responsible for monitoring the real estate market.

7.4 Duration of loan:

Banks shall decide the duration of the loan and this should take into cognizance the gestation *period and peculiarities of the object being financed*.

8.0 SMALL AND MEDIUM ENTERPRISES FINANCING:

8.1 Policy to be duly approved by board of directors:

Banks shall prepare a comprehensive policy for SME financing duly approved by their Board of Directors. The policy should be reviewed at least every three years.

8.2 Source and Capacity of Repayment and Cash Flow backed Lending:

Banks shall specifically identify the sources of repayment and assess the repayment capacity of the borrower on the basis of assets conversion cycle and expected future cash flows. In order to add value, the banks are encouraged to assess conditions prevailing in the particular sector/industry they are lending to and its future prospects. The banks should be able to identify the key drivers of their borrowers' businesses, the key risks to their businesses and their risk mitigants.

8.3 Securities:

Banks shall decide on appropriate security for SME facilities.

9.0 AGRICULTURE FINANCING:

9.1 Policy to be duly approved by board of directors:

Banks shall prepare a comprehensive agriculture financing policy duly approved by their Board of Directors. The agricultural policy may be part of the overall credit policy of a bank. The policy should, *inter alia*, cover loan administration, disbursement and appropriate monitoring mechanism. The policy should be reviewed at least every three years.

9.2 Repayment capacity of the borrower:

While extending agricultural financing, the banks should take into account the total indebtedness of the borrower and his disposable income.

9.3 Natural Calamities:

- a) Where natural calamities impair the repaying capacity of agricultural borrowers, as a relief measure. Banks may decide on their own to:
 - i) convert the short-term production loan into a term loan or re-schedule the repayment period, and
 - ii) grant fresh short-term loans

- b) In such cases of conversion or re-schedulement, the term loan as well as fresh short-term loan may be treated as current and need not be classified as nonperforming loan. The asset classification of these loans would, therefore, be governed by the revised terms and conditions and these would be treated as non performing under the extant norms applicable for classifying agricultural advances as non- performing loan.

9.4 Insurance of Agriculture Produce:

Banks may request their agriculture loan borrower to insure their agriculture produce in order to avoid loss in case of natural calamity.

9.5 Proper utilization of loan:

Where the agricultural loans have been extended for specified purposes, the banks are encouraged to ensure that the loans have been utilized for the same purposes for which they were obtained. For this purpose, the banks may consider it prudent to make payments directly to the suppliers wherever appropriate.

9.6 Valuation of Security:

The valuation of security in Agriculture Financing is a complicated and specialized area; therefore experts should be hired for valuation related issues.

9.7 Cash flow based facilities:

Banks are encouraged to extend agriculture financing on the basis of future cash flows instead of relying solely on the collateral.

10.0 MICROFINANCE LOANS:

For microfinance loans, the current microfinance guidelines issued for microfinance banks are applicable. Other finance companies which come under the supervision of Other Financial Institutions Supervision Department (OFISD) shall follow the guidelines applicable to them.

11.0 RETAIL FINANCING

11.1 Minimum conditions for Retail Financing:

- a) Apart from the specific guidelines given under each mode of financing separately, general requirements laid down here should also be followed by banks while undertaking retail financing. It may be noted that these are the minimum requirements and should not in any way be construed to restrict the role of the management of banks to further strengthen the risk management processes through establishing comprehensive credit risk management systems appropriate to their type, scope, sophistication and scale of operations. The Board of Directors of banks are required to establish policies, procedures and practices to define risks, stipulate responsibilities, specify security requirements, design internal controls and then ensure strict compliance with them.

- b) For a facility to be classified as a retail financing it should fulfil the following criteria:
 - (i) The exposure must be to an individual person or persons; and
 - (ii) The exposure must take the form of any of the following: revolving credits and lines of credit (including credit cards and overdrafts), personal term loans and leases (e.g. instalment loans, auto loans and leases, student and educational loans, personal finance). Mortgage loans are excluded to the extent that they qualify for treatment as housing finance.

12.0 LOAN LOSS PROVISIONING

12.1 Credit portfolio classification system for facilities other than “Specialized loans”

- a) Licensed banks should review their credit portfolio continuously (at least once in a quarter) with a view to recognizing any deterioration in credit quality. Such reviews should systematically and realistically classify banks’ credit exposures based on the perceived risks of default. In order to facilitate comparability of banks’ classification of their credit portfolios, the assessment of risk of default should be based on criteria which should include, but are not limited to, repayment performance, borrower’s repayment capacity on the basis of current financial condition and net realizable value of collateral.
- b) Credit facilities (which include loans, advances, overdrafts, commercial papers, bankers acceptances, bills discounted, leases, guarantees, and other loss contingencies connected with a bank’s credit risks) should be classified as either “performing” or “non-performing” as defined below:
 - 1) a credit facility is deemed to be performing if payments of both principal and interest are up-to-date in accordance with the agreed terms;
 - 2) a credit facility should be deemed as non-performing when any of the following conditions exists:
 - (i) interest or principal is due and unpaid for 90 days or more;
 - (ii) interest payments equal to 90 days interest or more have been capitalised rescheduled or rolled over into a new loan (except where facilities have been reclassified as specified in 12.1 (d) below).
- c) The practice whereby some licensed banks merely renew, reschedule or roll-over non-performing credit facilities without taking into consideration the repayment capacity of the borrower is objectionable and unacceptable. Consequently, before a credit facility already classified as “non-performing” can be reclassified as “performing” the borrower must effect cash payment such that outstanding unpaid interest does not exceed 90 days.
- d) When a loan rescheduling is agreed with a customer, the rescheduling should be treated as a new facility but provisioning should continue until it is clear

that rescheduling is working at a minimum, for a period of 90 days. Reversal of interest previously suspended and provision against principal previously made should be recognized on a cash basis.

- e) Non-performing credit facilities should be classified into three categories namely, sub-standard, doubtful or lost on the basis of criteria below:

- 1) Sub-Standard

The following objective and subjective criteria should be used to identify sub-standard credit facilities:

12.2 Provision for non-performing facilities other than “Specialized loans” as defined by the guidelines

- a) Licensed banks are required to make adequate provisions for perceived losses based on the credit portfolio classification system prescribed in paragraph 12.1 in order to reflect their true financial condition. Two types of provisions (that is specific and general) are considered adequate to achieve this objective. Specific provisions are made on the basis of perceived risk of default on specific credit facilities while general provisions are made in recognition of the fact that even performing credit facility harbours some risk of loss no matter how small. Consequently, all licensed banks shall be required to make specific provisions for non-performing credits as specified below:

- 1) For facilities classified as Sub-Standard, Doubtful. or Lost:

- (i) interest overdue by more than 90 days should be suspended and recognized on cash basis only.

- (ii) principal repayments that are overdue by more than 90 days should be fully provided for and recognized on cash basis only.

- 2) or principal repayments not yet due on non-performing credit facilities, provision should be made as follows:

- (i) Sub-Standard Credit Facilities: 10% of the outstanding balance;

- (ii) Doubtful Credit Facilities: 50% of the outstanding balance;

- (iii) Lost Credit Facilities: 100% of the outstanding balance.

- b) For prudential purpose, provisioning as prescribed in 12.2(a) should only take cognizance of realizable tangible security (with perfected legal title) in the course of collection or realization. Consequently, collateral values should be recognized on the following basis:

- 1) For credit exposure where the principal repayment is in arrears by more than six months, the outstanding unprovided principal should not exceed 50% of the estimated net realizable value of the collateral security.

- 2) For credit exposure where the principal repayment is in arrears by more than one year, there should be no outstanding unprovided portion of the credit facility irrespective of the estimated net realizable value of the security held.

- 3) For a credit exposure secured by a floating charge or by an unperfected or equitable charge over tangible security, it should be treated as an unsecured credit and no account should be taken of such security held in determining the provision for loss to be made.
- 4) For all credit exposure classified as lost, but with credit enhancement and mitigation strategies such as collateral, etc., banks are allowed to make haircut adjustments as defined in section 12.13.
- 5) Provisioning and classifications under 12.1 and 12.2 apply to commercial, commodities financing, corporate loans, retail and consumer credits and facilities granted to federal, state and local governments and their parastatals. Other credits or facilities not specifically classified as specialized loans are also subject to provisioning under section 12.1 and 12.2.

12.3 Provision for non-performing facilities under "Specialized loans"

The classifications and provisioning for specialized loans such as Agricultural finance, Project finance, Object finance, Real estate Finance, SME finance and Mortgage finance takes into considerations the cash flows and gestation periods of the different loan types. For the various types of loans, the basis for classifications and provisioning is presented in Annexure 2 to 6.

12.4 Adapting Prudential Guidelines to IFRS

When IFRS is adopted in Nigeria, Banks would be required to make provisions for loans as prescribed in the relevant IFRS Standards.

- a) Provisions for loans recognized in the profit and loss account should be determined based on the requirements of IFRS. However, the IFRS provisions should be compared with provisions determined under prudential guidelines and the expected impact/changes in general reserve should be treated as follows:
 - (i) Prudential Provisions is greater than IFRS provisions; transfer the difference from the general reserve to a non-distributable regulatory reserve.
 - (ii) Prudential Provisions is less than IFRS provisions; the excess charges resulting should be transferred from the regulatory reserve account to the general reserve to the extent of the non-distributable reserve previously recognized.
- b) The non-distributable reserve should be classified under Tier 1 as part of core capital.

12.5 Credit Portfolio Disclosure Requirement

- a) Each licensed bank is required to provide in its audited financial statements, an analysis of its credit portfolio into "performing" and "non-performing" as defined in paragraphs 12.1 (b) and 12.1 (e)
- b) The amount of provision for deterioration in credit quality (that is, losses) should be segregated between principal and interest.

- c) A maturity profile of credit facilities based on contracted repayment programme, should be provided along with the maturity profile of deposit liabilities in the financial statement.
- d) Other details as required by the CBN circular on “minimum information to be disclosed in financial statements”.

12.6 Disclosure Requirement for “Specialized loans”

- a) The banks shall disclose total loans outstanding under each specialized loan as at year end and provision against the loans.
- b) The banks shall disclose non-performing loans by loan types in the financial statements and the percentage to total loans along with movement of specific provision under each category.
- c) The non-performing loans shall be classified under each classification category, i.e. watch list, substandard, doubtful, very doubtful and lost.

12.7 Interest Accrual

- a) It is the responsibility of bank management to recognize revenues when they are earned or realized and make provision for all losses as soon as they can be reasonably estimated. However, experience revealed a wide diversity amongst licensed banks on income recognition. While a few banks cease accruing interest on non-performing credit facilities after three months, some after six months or a year, some do not appreciate the need to suspend interest on such facilities.
- b) In order to ensure the reliability of published operating results, the following criteria should be adopted by all licensed banks for the treatment of interest on non-performing credit facilities:
 - i) All categories of non-performing credit facilities should automatically be placed on non-accrual status that is, interest due thereon should not be recognized as income.
 - ii) All interest previously accrued and uncollected but taken into revenue should be reversed and credited into suspense account specifically created for this purpose which should be called “interest in suspense account” unless paid in cash by the borrower. Future interest charges should also be credited into same account until such facilities begin to perform.
 - iii) Once the facilities begin to perform, interest previously suspended and provisions previously made against principal debts should be recognized on cash basis only. Before a “non-performing facilities”, can be re-classified as “performing”, unpaid interest outstanding should not exceed 90 days.

12.8 Classification of Other Assets

- a) The term “Other Assets” relate to those asset items, not shown separately in the balance sheet of a bank. These items include Impersonal Accounts (of

various descriptions), Suspense Accounts such as frauds and cashiers' shortages, Cheque Purchased, Uncleared Effects and Inter-branch Items. More often than not, the accounts usually grouped together as "Other Assets" contain fictitious or intangible assets. The accounts could contain many long outstanding items, the origins of which had been long forgotten, untraceable as well as irreconcilable. In situations like these, the items if not material should be written off and where material (i.e. at least 10% of aggregate balance of Other Assets) should be classified as below. It should be noted that items enumerated below are by no means exhaustive:

- 1) Sub-Standard
 - i) Cheques purchased and uncleared effects outstanding after the permissible clearing period.
 - ii) Fraud cases of up to 6 months old and under police investigation regardless of the likely outcome of the cases.
 - iii) Inter-branch items of 3 months.
 - iv) All other intangible suspense accounts existing in the books for up to 3 months. A minimum provision of 10% should be made for "Other Assets" items classified as sub-standard.
- 2) Doubtful
 1. The above listed features must have been aggravated and are
 2. likely to result in losses higher than recommended for sub-standard
 3. items. Items for doubtful classification should include, but are not
 4. limited to the following:
 - i) Cheques purchased of between 3 to 6 months old but which had been withdrawn or cancelled and substituted with new ones. Similar treatment should be accorded to uncleared effects for which values had been given.
 - ii) Outstanding fraud cases of 6 to 12 months old and with slim chances of full recoveries.
 - iii) Inter-branch items outstanding for between 3 to 6 months.
 - iv) All other intangible suspense accounts outstanding for between 6 months and 12 months. A minimum of 50% provision should be made for "Other Assets" items classified as doubtful.
- 3) Lost

Items for lost classification should include, but are not limited to the following:

 - i) Cheques purchased and uncleared effects over 6 months old and for which values had been given.
 - ii) Outstanding fraud cases over 12 months and involving protracted litigations.
 - iii) Inter-branch items over 6 months old whether or not the origins are known.
 - iv) All other intangible suspense accounts over 12 months old.

Full provision (i.e. 100%) should be accorded to items classified lost.

12.9 Revolving and Overdraft Facilities

- a) Normally the first indication that a revolving or overdraft facility may be non-performing is when the turnover on the account is considerably lower than anticipated when the facility was arranged or when interest is charged which takes the facility above its credit limit.
- b) In addition, a revolving or overdraft facility may be within limit but will be considered to be non-performing if interest have not been serviced for 90days and above. In these circumstances:
 - i) A revolving facility should be classified as non-performing and unpaid interest suspended once 90 days (or such shorter period as may be specified by regulatory authorities) elapses after the facility limit is exceeded.
 - ii) Once a facility is classified as non-performing, provision against principal and unpaid interest should be made in accordance with this prudential guidelines.

In the case of revolving and overdraft facilities, where a loan rescheduling is agreed with a customer, the rescheduling should be treated as a new facility but provisioning should continue until it is clear that the rescheduling is working at a minimum for a period of 90 days. Reversal of interest previously suspended and, provisions against principal previously made, should be recognized on cash basis.

12.10 Facilities Without Approval

- a) Facilities without approval comprise the following:
 - i) Excess over limit on overdrafts and current accounts;
 - ii) Matured loans without renewal; and
 - iii) Other facilities that do not have an existing contract defining the customers' Obligations to repay such facilities.
- b) Facilities without approval that are not regularized within 90 days shall be classified in accordance with section 12.1 and provisions recognized in accordance with section 12.2.

12.11 Off- Balance Sheet Engagements

- a) A proper appraisal of Off-Balance-Sheet engagements should be undertaken with a view to determining the extent of loss a bank may likely sustain. Off-Balance-Sheet items include Letters of Credits, Bonds, Guarantees, Indemnities, Acceptances, and Pending or Protracted Litigations (the outcome of which could not be easily determined).
- b) The following factors should be taken into consideration in recognizing losses on Off-Balance-Sheet engagements:
 - i) Date the liability was incurred
 - ii) Expiry Date

- iii) Security Pledge
- iv) Performance of other facilities being enjoyed by the customer, e.g. loan and advances
- v) Perceived Risk.
- c) Non performing off balance sheet items should be recognized on the balance sheet and provisions made in line with sections 12.1 and 12.2.
- d) Full provisions must be made for any loss that may arise from Off-Balance-Sheet transactions.
- e) Off-Balance-Sheet Engagements should not form part of balance sheet totals while their disclosure in note form should distinguish between:
 - i) direct credit substitutes, e.g. general guarantees of indebtedness (including standby letters of credit serving as financial guarantees for loans and securities), and acceptances (including endorsements with the character of acceptances)
 - ii) certain transaction-related contingent items {e.g. performance bonds, bid bonds, warranties and standby letters of credit related to particular transactions;
 - iii) short-term self-liquidation trade related contingencies (such as documentary credits collateralized by the underlying shipments)
 - iv) sale and repurchase agreements and assets sales with recourse, where the credit risk remains with the bank;
 - v) forward assets purchases, forward deposits and partly-paid shares and securities, which represent commitments with certain draw down;
 - vi) note issuance facilities and revolving underwriting facilities;
 - vii) other commitments (e.g. formal standby facilities and credit lines) with an original maturity of over one year;
 - viii) similar commitments with an original maturity of up to one year, or which can be unconditionally cancelled at any time.

12.12 Provisioning requirements for “Specialized loans”

- a) The banks shall classify and make provisioning for project financings as per provision requirements specified in Annexure 2.
- b) The banks shall classify and make provisioning for object finance, income producing real estate and commercial real estate financings as per provision requirements specified in Annexure 3.
- c) The banks shall classify and make provisioning for SME financings as per provision requirements specified in Annexure 4.
- d) Banks shall classify and make provisioning for agriculture loans as per provision requirements specified in Annexure 5.
- e) Microfinance loans:

For microfinance loans, the current microfinance guidelines issued for microfinance banks are applicable. Other finance companies which come under the supervision of Other Financial Institutions Supervision Department (OFISD) shall follow the guidelines applicable to them.

f) Mortgage loans:

For Mortgage transactions, provisions should take due account of the long-term nature of the loans and the security available. If a repayment becomes overdue for three months, no further income should be recognized until regular payments resume.

- i) Provision against principal should be 10% if payment becomes overdue for more than six months.
- ii) Where principal repayment is overdue by more than one year, the outstanding unprovided principal should not exceed 50% of the estimated net realizable value of the security.
- iii) Where principal repayment is overdue by more than two years, there should be no outstanding unprovided portion of the credit facility, irrespective of the estimated net realizable value of security held. Summary of the provisioning for mortgage loans is specified in Annexure 6.

g) Margin financing:

Marked to Market:

- i) All margin facilities shall be marked to market on a daily basis .The excess of loan balance over the market value should be provisioned and charged to the profit and loss account.
- ii) Any increase in the mark to market value from the previous valuation can only be recognized to the extent of previous charge off.
- iii) (All margin facilities should be reported in accordance with the rules and regulations issued by the CBN and SEC.

12.13 Collateral Adjustment and Provisioning for lost Facilities

- a) In order to encourage banks to utilize more credit enhancement and mitigation strategies, a process for collateral adjustments in loan provisioning is being introduced. This process will put into consideration the quality and realisability of underlying collaterals pledged against loan facilities.
 - 1) For collaterals to be considered for “Haircut Adjustments”, it must be:
 - i) Perfected;
 - ii) Realizable, with no restrictions on sale; and
 - iii) Regularly valued with transparent method of valuation;
 - 2) All documentation used in collateralized transactions must be binding on all parties and legally enforceable in all jurisdictions. Banks must conduct sufficient legal review to verify this and have a well-founded legal basis to reach

this conclusion, and undertake such further review as necessary to ensure continuing enforceability.

- 3) Valuations of residential and commercial properties should be carried out by an independent professional valuer. The valuer while assigning any values to the mortgaged residential and commercial property shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location, condition and the prevailing economic conditions in the relevant sector, business or industry.

The values of mortgaged residential and commercial properties so determined by the valuer must be a reasonably good estimate of the amount that could currently be obtained by selling such assets in a forced / distressed sale condition. The valuer should also mention in their report the assumptions made, the calculations / formulae/ bases used and the method adopted in the determination of the values, i.e. the forced sales value (FSV).

- 4) The following collateral instruments that are eligible for haircuts include:

- i) Cash (as well as certificates of deposit or comparable instruments issued by the lending bank) on deposits with the bank which is incurring the counterparty exposure.

- ii) Treasury bills and other government securities.

Quoted equities and other traded securities.

- iii) Bank guarantees and receivables of blue chip companies.

Residential legal mortgage

- iv) Commercial legal mortgage

- v) Other collaterals as defined by the CBN from time to time.

Description of Collateral Haircut adjustments weightings

Cash 0%

Treasury Bills and government 0%

Quoted equities and other traded 20%

Bank guarantees and receivables from blue chip companies 20%

Residential legal mortgage 50%

Commercial legal mortgage 50%

- 5) The following hair cut adjustments shall be applicable on all loan types classified as lost:

- 6) The haircuts adjustment weightings shall be taken into consideration in arriving at the adjusted provisions for facilities classified as lost. The adjusted provisions shall be derived as follows:

Required Provision = $E - \{VC \times (1 - HW)\}$

Where,

E = Total Exposure

HW =haircut weightings

VC = Value of Collateral

If $\{VC \times (1-HW)\}$ is greater than E then no provision is required.

The value of collateral for quoted equities and other traded securities shall be market value while for mortgages it shall be forced sale value (FSV).

7) The CBN will review the list of eligible collaterals and the haircut adjustments applicable from time to time.

b) Other Conditions for Haircut Adjustments

1) The non-performing facilities requiring haircut adjustments and the haircut adjustments calculations including valuation of collaterals should be reviewed by the banks' auditors and must be ratified by the regulators.

2) For the purpose of (1) above, review of valuation by external auditors does not fall under appraisal or valuation services prohibited by code of corporate governance.

3) A maximum of 1 year is allowed for the haircut adjustments pending which the collaterals should be realized and shortfall in provision taken.

4) If the facilities on which haircut adjustments have been applied to reduce its provisions remain non-performing after one year, then the haircut adjustments will be disregarded.

12.14 Regulators' Power Over Adequacy of Provisioning

a) Where CBN believes that based on the bank's portfolio analysis, there is excessive concentrations risks, or has industry knowledge of a delinquent obligor and other subjective factors, the CBN can mandate banks to make additional provision.

b) Some of the conditions that can make CBN to mandate banks to make additional provision include:

i) Huge (excessive) concentrations in banks' portfolios.

ii) High number of watch listed or restructured or rescheduled loans.

iii) Adverse macro-economic developments affecting the industry to which the bank is exposed.

iv) Poor board oversights and insider dealings, etc.

12.15 Update of loan loss provisioning guidelines:

The CBN shall have powers to amend the loan loss provisioning guidelines as and when they deemed it necessary so that the guidelines reflect the developments in the market and the economic realities of the industry. The review period shall not be later than 5 years.

12.16 Dynamic Provisioning

- a) The general provisioning guidelines shall be issued by the CBN as a counter cyclical measure from time to time pending its replacement with dynamic provisioning.
- b) The data required for implementation of dynamic provisioning regime shall be gathered by the CBN over a period of five years through quarterly returns. Banks shall be required to submit the quarterly returns as prescribed by the CBN.

13.0 Financial soundness indicators and financial ratios

- a) Banks are required as part of their risk management framework to institute a process for computing financial ratios and financial soundness indicators for checking financial health of each institution.
- b) Benchmarks should be set and actual results computed and compared to set benchmark at least on a quarterly basis. The report should be presented to the Board of Directors or appropriate Board Committees for deliberation and remedial actions as considered necessary;
- c) Illustrative examples of financial soundness indicators and financial ratios for banks are presented in Annexures 9 and 10

Chapter 27

Central Bank of Nigeria Guidelines on International Money Transfer Services in Nigeria, 2014

1.0 PREAMBLE

In exercise of the powers conferred on the Bank by Section 2 (d) of the Central Bank of Nigeria Act, 2007 and Section 57(2) of the Banks and Other Financial Institutions Act (BOFIA), Laws of the Federation of Nigeria, 2004, to issue guidelines for the maintenance of adequate and reasonable financial services to the public, the Central Bank of Nigeria (CBN) hereby issues the following guidelines for the regulation of International money transfer services in Nigeria.

1.1 OBJECTIVES

The objectives of the guidelines are to:

- i. provide minimum standards and requirements for International money transfer services operations in Nigeria;
- ii. specify delivery channels for offering international money transfer services (inbound/outbound), in a cost effective manner;
- iii. provide an enabling environment for international money transfer services in the Nigerian economy;
- iv. specify minimum technical and business requirements for various participants in the international money transfer services industry in Nigeria; and
- v. provide broad guidelines for implementation of processes and flows of international money transfer services, from initiation to completion.

1.2 SCOPE

This guidelines address business rules governing the operation of international money transfer services in Nigeria. In addition, it sets the basis for the regulation of the services offered at different levels and by diverse participants.

2.0 LICENSING REQUIREMENTS

- 2.1 No person or institution shall provide international money transfer services unless such person/institution has been duly licensed by the CBN.

2.2 Application for a licence to carry on the business of International money transfer services shall be submitted to the office of the Director, Trade & Exchange Department, Central Bank of Nigeria, Abuja.

2.3 Documentary Requirements

All applications shall be accompanied with the following:

- i. Board of director's approval to offer International money transfer services.
- ii. Copy of the applicant's certificate of incorporation
- iii. Memorandum & Articles of Association (certified copy), of which the primary object clause shall indicate provision of Money Transfer Services.
- iv. Shareholding structure of the Company
- v. Forms C02 (Return on Allotment of shares) and C07 (Particulars of Directors)
- vi. Profiles of the Board and Management of the Company to include: CVs, functional contact e-mails and telephone numbers, ownership, governance and management structure;
- vii. Organogram of the company
- viii. Business Plan, to include:
 - a. Nature of the Business
 - b. Features of the scheme
 - c. Internal control systems and monitoring procedures
 - d. Security features that will be put in place
 - e. 3 years financial projections/Market analysis for the Company Transaction and other charges that will be borne by customers
 - f. Profit sharing agreement among the parties
 - g. Diagrammatic illustration of transaction flows
 - h. Consumer Protection and Dispute Resolution Mechanism
- ix. Information Technology Policy of the Company including:
 - a. Privacy Policy
 - b. Information Ownership/Disclosure/Loss Policy
 - c. Backup and Restore Policy
 - d. Network Security Policy
 - e. Encryption Policy
 - f. Confidential Data Policy
 - g. Password Policy
 - h. Third Party Connection Policy
 - i. Incidence Response Policy
 - j. Physical Security Policy
 - x. Enterprise Risk Management Framework
 - xi. Contingency and Disaster Recovery Plan(business continuity plan)
 - xii. Draft agreements with the participating parties

- xiii. Tax Clearance Certificate for three (3) years
- xiv. Project Deployment Plan (time, location, operation, etc.)
- xv. Credit reports from a licensed credit bureau for the shareholders and key officers of the money transfer services operator;
- xvi. Any other information as may be required by the CBN from time to time
- xvii. A non-refundable application fee of ₦500,000 (Five Hundred Thousand Naira) or such other amount that the Bank may specify from time to time, payable to the “Central Bank of Nigeria” by electronic transfer.
- xviii. Evidence of meeting the minimum paid up share capital of:
 - a. ₦2,000,000,000 (two billion naira) for Nigerian companies; and
 - b. ₦50,000,000 (fifty million naira) or its equivalent for Foreign companies, plus the guarantee of the parent company
- xix. Presence in at least seven (7) different countries.

2.4 Overseas Partnership Requirements

A money transfer operator, who wishes to engage a foreign technical partner that will provide global or regional payment or money transfer platform, shall obtain a letter of no objection from the CBN. The following conditions shall apply to the technical partner:

- a. Be a registered entity, licensed in its home country to carry on money transfer activities.
- b. Have a minimum Net-worth of US\$1 million, as per the latest audited financial statement, or as may be determined by the CBN from time to time.
- c. The Overseas technical partner should be well established in the money transfer business, with a track record of operations.
- d. There should be an MOU that clearly delineates liabilities in the event of disputes and/or process failures.

2.5 The CBN shall conduct appropriate due diligence on the promoters, directors and key officers of the proposed money transfer operator.

2.6 Prohibitions

- a) Deposit Money Banks are prohibited from operating as Money Transfer Service Operators (MTSO), but can act as agents.
- b) Section 19 (1) (a) of BOFIA 1991 as amended, for persons not qualified to be on the employment of banks, shall also apply to Money Transfer Service Operators.

2.7 Disqualification of Shareholders and officers

In line with the BOFI Act No. 25 of 1991 [as amended], all the conditions stipulating the exclusion of certain individuals from the management of banks, shall apply to the management of Money Transfer Service Providers, except with the written permission of the Governor of the CBN.

Shareholders and officers of the company shall be disqualified, based on the provisions of Section 44 (2) of the BOFIA 1991 as amended. The section provides that: No person shall be appointed or shall remain a director, secretary or an officer of a bank who:

- a) is of unsound mind or as a result of ill- health is incapable of carrying out his duties; or
- b) is declared bankrupt or suspends payments or compounds with his creditors including his bankers; or
- c) is convicted of any offence involving dishonesty or fraud; or
- (d) is guilty of serious misconduct in relation to his duties; or
- d) in the case of a person possessed of professional qualification, is disqualified or suspended (otherwise than of his own request) from practising his profession in Nigeria by the order of any competent authority made in respect of him personally.

3.0 OPERATIONS OF INTERNATIONAL MONEY TRANSFER SERVICES

3.1 Permissible Activities

The permissible operations of International money transfer services shall include allowable inbound and outbound international money transfer transactions. The transactions shall consist of the following activities:

- a) The acceptance of monies for the purpose of transmitting them to persons resident in Nigeria or another country.
- b) Cross-border personal money transfer services, such as, money transfer services towards family maintenance and money transfer services favouring foreign tourists visiting Nigeria shall be allowed under this arrangement.
- c) The money transfer services shall target individual customers mainly and the transactions shall be on “person to person transfer” basis to safeguard against corporate customers that might structure their transactions into smaller amounts to circumvent the statutory reporting threshold.

3.2 Non Permissible Activities

A money transfer operator is not authorized to:

- a) Act as an authorized dealer in gold or other precious metals;
- b) Engage in deposit taking and/or lending money;
- c) Maintain current accounts on behalf of customers;
- d) Establish letters of credit; or
- e) Act as a custodian of funds on behalf of customers.
- f) Engage in institutional transfers. A money transfer service operator shall not engage in any other business other than as authorized by the Bank.
- g) Buy foreign exchange from the domestic foreign exchange market for settlement.

3.3 Business Premises

A money transfer operator shall display prominently at each of its business premises:

- a) The current licence to engage in money transfer services;
The business hours;
- b) Details of the tariffs to be charged;
- c) A notice informing the customers that they are entitled to be issued with a receipt for any money transfer service transactions; and
- d) A notice to the effect that the money transfer operator is not allowed to accept deposits or lend to the public.

3.4 Notification of Business Hours

A money transfer service operator shall notify the Bank and its customers of:

- i. the business hours for each of its outlets;
- ii. any intended changes in business hours, in any of their places of business, fifteen days in advance, before the Changes are effected

3.5 Temporary closure of business

A money transfer service operator wishing to temporarily close its main - offices shall seek the consent of the CBN. In the event of an emergency, the operator shall relocate to its established back up site and notify the CBN accordingly. The temporary closure of an agency or outlet shall be notified to the CBN immediately. In either event above, the operator/agent shall display a conspicuous notice to that effect.

3.6.0 Transfer Limits

3.6.1 Allowable limit of the outbound money transfer shall be US\$2,000 or its equivalent per transaction, subject to periodic review by the CBN.

3.6.2 All in-bound money transfers to Nigeria shall only be disbursed to beneficiaries through bank accounts or mobile money wallets.

3.6.3 Where the beneficiary does not have a bank account or mobile money wallet, payments shall only be made upon the provision of a satisfactory reference from a current account holder in a bank, confirming that the beneficiary is the bona fide owner of the funds.

3.6.4 The following conditions shall apply in the transaction:

- i. The currency to be given to a money transfer agent for an outbound transfer shall be the Naira;
- ii. An outward payment transaction shall be executed in a convertible currency agreed between the parties; and
- iii. Where a currency conversion service is offered before initiation of a payment transaction or at the point of payment, the money transfer services operator

must disclose all charges, as well as the exchange rate to be used for converting the payment transaction

3.7 Split Transactions

A money transfer service operator shall not allow or process a transaction that appears to have been deliberately split into small amounts to avoid the reporting requirements under the provisions of the AML/CFT Act.

3.8 Agents

An approved money transfer service operator may conduct its business through an agent, in line with the provisions of these guidelines.

An agent is a suitable entity engaged by a money transfer service operator to provide money transfer service on its behalf, using the agent's premises, staff and technology.

3.8.1 Suitability for appointment:

An agent shall:

- 1) be a corporate body registered with the corporate affairs commission in Nigeria or with a similar body in other jurisdictions or established by law.
- 2) be an existing and well established commercial entity which has been operational for at least 12 months.
- 3) not have been classified as a non performing borrower by any financial institution in the last 12 months.
- 4) possess appropriate physical infrastructure and human resources to provide money transfer services.
- 5) not be an entity listed on any Sanction list.
- 6) Be a financial institution under the regulatory purview of the CBN.

3.8.2 Engagement of an Agent

The money transfer operator shall:

- 1) Execute a contract with each agent that specifies terms and conditions of their engagements. These terms shall include but are not limited to the following:
 - a) A statement that the money transfer services operator is wholly responsible and liable for all actions or omissions of the agent.
 - b) Measures to mitigate risks associated with agent business including limits, customer transactions, cash management, cash security, security of agent premises and insurance policies;
 - c) Specific services to be rendered by the agent;
 - d) The rights, expectations, responsibilities and liabilities of both parties;
 - e) A statement that the Bank shall have free, unfettered and timely access to the internal systems, documents, reports, records, staff and premises of the agents, in so far as money transfer business is concerned and shall exercise such powers as it may considered necessary;

- f) Appropriate policies and procedures to detect, prevent, report or otherwise deal with incidences of money laundering;
 - g) Responsibilities of the agent to deliver supporting transaction documents;
 - h) A statement that all information or data that the agent collects in relation to agency money transfer services, whether from the customers, the money transfer operator or from other sources, is the property of the money transfer operator;
 - i) Adequate oversight safeguards for the money transfer operator to address instances of non-compliance by the agent with the stipulated obligations;
 - j) Prohibition from charging the beneficiary any fees other than the fees agreed upon with the sender, at the initiation of the transaction;
 - k) Business hours of the agent;
 - l) Suitable limits on cash holding by the agent and also limits on individual customer payments and receipts;
 - m) Confidentiality of customer and user information;
 - n) Remuneration for the agent;
 - o) A transition clause on the rights and obligations of the money transfer operator and the agent upon termination or cessation of the agency contract; and
 - p) Detailed procedure for disengagement or termination of the agency contract.
- 2) Retain a contract for the life of the agency plus a retention period of 7 years or as may be determined by the CBN from time to time.
 - 3) Notify the Bank of the appointment of each agent, providing details of name, phone number and any additional information as may be required by the Bank
 - 4) Conduct the business in compliance with all the applicable laws, regulations and guidelines.

3.9.0 Bank accounts

A money transfer operator shall:

- 3.9.1 Hold all customer funds for transfer in an account designated as “customers’ account” domiciled with any deposit money bank in Nigeria. This account - shall be separate from all other accounts maintained by the operator.
- 3.9.2 Maintain complete and accurate accounting records.
- 3.9.3 Produce, upon request by the Bank, all documents pertaining to the account activity, including, but not limited to, bank statements, cheque books, deposit slips and reconciliations or other comparable account records.

3.10 Records.

3.10.1A money transfer operator shall:

3.10.2 Maintain a management information system that facilitates efficient collection and processing of data required for audit trails.

3.10.3 Maintain accurate information on each transaction. Transaction information shall include:

- a) Date of transaction;
- b) Name, address and contact phone number of sender;
- c) Name, address and contact phone number of beneficiary;
- Acceptable means of identification;
- d) Amount and currency;
- e) Occupation of the sender;
- f) Type (Sending or Receiving) and Purpose of the transaction; and
- g) Source of funds.

3.1.0.4 Issue receipt, which shall contain the following information:

Full names of the customer;

- a) The type and amount of currency sent or received;
- b) The transaction reference;
- c) The nature, time and date of the transaction;
- d) Customer signature; and
- e) Commission charged, if any.

3.10.5 All transactions generated by the money transfer operator in the course of its business activities must be posted in its books of accounts.

3.10.6 A money transfer service operator shall keep accurate and up to date records and ensure that the records are verified on a daily basis.

3.11 Returns

A money transfer service operator shall submit its returns to the Director, Trade & Exchange Department, Central Bank of Nigeria, Abuja.

3.12 Anti-Money Laundering Risk

All money transfer operators in Nigeria shall comply with the provisions of the Central Bank of Nigeria “Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions Regulations 2013” and all other applicable laws and regulations.

4.0 DISCLOSURE REQUIREMENTS

4.1 GENERAL

A money transfer service operator shall disclose to its customers:

4.1.1 Details of applicable exchange rate, commission, fees and any other amount that may be charged by banks/agents involved in a transfer.

4.1.2 The meaning of any technical terms and acronyms used.

4.1.3 That it neither accepts deposits nor lends to the public

4.1.4 Prevailing exchange rates at all times and in all locations it conducts business.

4.2.0 Outward Money Transfer Services

A money transfer operator shall:

4.2.1 Advise customers of the time funds sent would be available for collection by beneficiaries;

4.2.2 Inform the customers within 24 hours where outward transfers could not be effected within the time frame advised.

4.2.3 Refund to the sender, any amount returned undelivered in the manner it was paid by the customer:

I. Where the operator is responsible for the returned transfer, the refund to the sender shall include all the fees and charges paid by the sender; and

II. Where the sender is responsible for the returned transfer, the operator shall recover from the sender, only costs associated with the transaction.

4.3.0 INWARD MONEY TRANSFER SERVICES

A money transfer operator shall:

4.3.1 Make payment to customers only in Nigerian currency, in line with CBN regulation;

4.3.2 Use the prevailing exchange rate on the day the transfer is received; and

4.3.2 Declare in the receipt/certificate of transfer that the money paid to the customer is not counterfeited.

4.4.0 CHARGES

4.4.1 All money transfer operators shall comply with the guide to money transfer charges, as provided by the CBN from time to time.

4.4.2 The provider must make refund where wrong, inappropriate or disproportionate charges or fees are identified internally by provider.

5.0 DISPUTE RESOLUTION

5.1 All complaints to the operator must be acknowledged on receipt.

5.2 Each operator shall provide a Complaints Management Unit to resolve complaints or disputes submitted by its customers. The unit shall provide its services free of charge through well publicized and dedicated channels, including phone numbers and e-mail address(es).

5.3 An operator must fully investigate complaints and make appropriate decision and communicate same to the complainant within one (1) week of the receipt of complaints.

5.4 Each complaint shall be assigned a unique identifier for ease of reference. Operators shall provide dedicated phone, email or other means by which complainants may enquire about the progress of their complaints. In addition, operators shall provide a response to all enquiries within 48 hours of receipt.

5.5 Where a complainant is dissatisfied with the decision, the operator shall provide an internal mechanism to review its initial decision.

5.6 The review body must arrive at a decision within one week of receiving letter of dissatisfaction from a complainant;

5.7 Where a complainant is not satisfied with a decision of a review body, the complainant may escalate the issue to the Director, Consumer Protection Department, Central Bank of Nigeria; and

5.8 A provider shall render monthly returns on all complaints to the Director, Trade & Exchange Department, Central Bank of Nigeria, Abuja, in a format approved by the Bank.

6.0 MISCELLANEOUS

6.1 At a minimum, an operator must have a second level authentication before payment could be made to recipients in the case of inward money transfer services;

1) An operator owes a customer a duty of confidentiality except where:

- a) Disclosure is at the instance of a relevant authority; and
- b) The customer expressly consents to disclosure.

2) An operator should not require from the customer, any means of

Identification different from those provided in extant CBN circulars and guidelines;

3) For the avoidance of doubt, any of the under-listed is an acceptable means of identification:

- a) International Passport;
- b) Driver's License;
- c) National Id. Card;
- d) INEC Registration Card; or
- e) Bank Verification Number (BVN)

7.0 REMEDIAL MEASURES

If a Money Transfer Service Operator or its agent fails to comply with these Guidelines, the CBN may take any corrective action against the MTSOs as may be prescribed from time to time.

8.0 SANCTIONS

In addition to the use of remedial measures in Section 8, the Bank may take any or all of the following sanctions against an MTSO, its board of directors, officers or agents:

- a) Withhold Corporate approvals;
- b) Financial Penalties;
- c) Suspension from Money Transfer operation; and
- d) Revocation of the Money Transfer Service operation licence.

9.0 GLOSSARY OF TERMS

Agent: An agent is a suitable entity engaged by a money transfer service operator to provide money transfer service on its behalf, using the agent's premises, staff and/or technology.

Bank: Central Bank of Nigeria

BOFIA: Banks and Other Financial Institution Act

CAC: Corporate Affairs Commission

CBN: Central Bank of Nigeria

Credit Bureau: Credit Reference Company - means an institution that collects information from creditors and available public sources on borrower's credit history. The bureau compiles the credit information on individuals/entities regarding their credits, credit repayments, court judgements, bankruptcies, etc. and then creates a comprehensive credit record that may be sold to lending institutions and other authorized users.

MTSO: Money Transfer Service Operator

Transaction: A transfer sent or transfer received as the case may be.

Transfer Amount: the funds collected from the sender for a transfer, excluding applicable fees.

Chapter 28

Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria, 2016

Preamble

The CBN recognizes that electronic banking and payments services are still at the early stages of development in Nigeria. Arising from the three major roles of the CBN in the areas of monetary policy, financial system stability and payments system oversight, the CBN Technical Committee on E-Banking has produced a report, which anticipates the likely impact of the movement towards electronic banking and payments on the achievement of CBN's core objectives. Following from the findings and recommendations of the Committee, four categories of guidelines have been developed as follows:

- Information and Communications Technology (ICT) standards, to address issues relating to technology solutions deployed, and ensure that they meet the needs of consumers, the economy and international best practice in the areas of communication, hardware, software and security.
- Monetary Policy, to address issues relating to how increased usage of Internet banking and electronic payments delivery channels would affect the achievement of CBN's monetary policy objectives.
- Legal guidelines to address issues on banking regulations and consumer rights protection.
- Regulatory and Supervisory, to address issues that, though peculiar to payments system in general, may be amplified by the use of electronic media.

The Guidelines are expected to inform the future conduct of financial institutions in e-banking and electronic payments delivery. A detailed report of the Technical Committee on e-Banking, which resulted in these Guidelines, is available separately.

THE GUIDELINES

1.0 Technology and Security Standards

CBN will monitor the technology acquisitions of banks, and all investments in technology, which exceed 10% of free funds, will henceforth be subject to approval. Where banks use third parties or outsource technology, banks are required to comply with the CBN guidelines.

1.1. Standards for Computer Networks & Internet

- a) Networks used for transmission of financial data must be demonstrated to meet the requirements specified for data confidentiality and integrity.
- b) Banks are required to deploy a proxy type firewall to prevent a direct connection between the banks back end systems and the Internet.
- c) Banks are required to ensure that the implementation of the firewalls addresses the security concerns for which they are deployed.
- d) For dial up services, banks must ensure that the modems do not circumvent the firewalls to prevent direct connection to the bank's back end system.
- e) External devices such as Automated Teller Machines (ATMs), Personal Computers, (PC's) at remote branches, kiosks, etc. permanently connected to the bank's network and passing through the firewall must at the minimum address issues relating to non-repudiation, data integrity and confidentiality. Banks may consider authentication via Media Access Control (MAC) address in addition to other methods.
- f) Banks are required to implement proper physical access controls over all network infrastructures both internal and external.

1.2. Standards on Protocols

Banks must take additional steps to ensure that whilst the web ensures global access to data enabling real time connectivity to the bank's back-end systems, adequate measures must be in place to identify and authenticate authorized users while limiting access to data as defined by the Access Control List.

Banks are required to ensure that unnecessary services and ports are disabled.

1.3. Standards on Application and System Software

- a) Electronic banking applications must support centralized (bank-wide) operations or branch level automation. It may have a distributed, client server or three tier architecture based on a file system or a Database Management System (DBMS) package. Moreover, the product may run on computer systems of various types ranging from PCs, open systems, to proprietary main frames.
- b) Banks must be mindful of the limitations of communications for server/client-based architecture in an environment where multiple servers may be more appropriate.
- c) Banks must ensure that their banking applications interface with a number of external sources. Banks must ensure that applications deployed can support these external sources (interface specification or other CBN provided interfaces) or provide the option to incorporate these interfaces at a later date.
- d) A schedule of minimum data interchange specifications will be provided by the CBN.

- e) Banks must ensure continued support for their banking application in the event the supplier goes out of business or is unable to provide service. Banks should ensure that at a minimum, the purchase agreement makes provision for this possibility.
- f) The bank's information system (IS) infrastructure must be properly physically secured. Banks are required to develop policies setting out minimum standards of physical security.
- g) Banks are required to identify an ICT compliance officer whose responsibilities should include compliance with standards contained in these guidelines as well as the bank's policies on ICT.
- h) Banks should segregate the responsibilities of the Information Technology (IT) security officer / group which deals with information systems security from the IT division, which implements the computer systems

1.4 Standards on Delivery Channels

1.4.1 Mobile Telephony: Mobile phones are increasingly being used for financial services in Nigeria. Banks are enabling the customers to conduct some banking services such as account inquiry and funds transfer. Therefore the following guidelines apply:

- a) Networks used for transmission of financial data must be demonstrated to meet the requirements specified for data confidentiality, integrity and non-repudiation.
- b) An audit trail of individual transactions must be kept.

1.4.2 Automated Teller Machines (ATM): In addition to guidelines on e-banking in general, the following specific guidelines apply to ATMs:

- a) Networks used for transmission of ATM transactions must be demonstrated to meet the guidelines specified for data confidentiality and integrity.
- b) In view of the demonstrated weaknesses in the magnetic stripe technology, banks should adopt the chip (smart card) technology as the standard, within 5 years. For banks that have not deployed ATMs, the expectation is that chip based ATMs would be deployed. However, in view of the fact that most countries are still in the magnetic stripe conversion process, banks may deploy hybrid (both chip and magnetic stripe) card readers to enable the international cards that are still primarily magnetic stripe to be used on the ATMs.
- c) Banks will be considered liable for fraud arising from card skimming and counterfeiting except where it is proven that the merchant is negligent. However, the cardholder will be liable for frauds arising from PIN misuse.
- d) Banks are encouraged to join shared ATM networks.
- e) Banks are required to display clearly on the ATM machines, the Acceptance Mark of the cards usable on the machine.

- f) All ATMs not located within bank premises must be located in a manner to assure the safety of the customer using the ATM. Appropriate lighting must be available at all times and a mirror may be placed around the ATM to enable the individual using the ATM to determine the locations of persons in their immediate vicinity.
- g) ATMs must be situated in such a manner that passers-by cannot see the key entry of the individual at the ATM directly or using the security devices.
- h) ATMs may not be placed outside buildings unless such ATM is bolted to the floor and surrounded by structures to prevent removal.
- i) Additional precaution must be taken to ensure that any network connectivity from the ATM to the bank or switch are protected to prevent the connection of other devices to the network point.
- j) Non-bank institutions may own ATMs, however such institutions must enter into an agreement with a bank for the processing of all the transactions at the ATM. If an ATM is owned by a non-bank institution, processing banks must ensure that the card readers, as well as, other devices that capture/store information on the ATM do not expose information such as the PIN number or other information that is classified as confidential. The funding (cash in the ATM) and operation of the ATM should be the sole responsibility of the bank.
- k) Where the owner of the ATM is a financial institution, such owner of the ATM must also ensure that the card reader as well as other devices that capture information on the ATM does not expose/store information such as the PIN number or other information that is classified as confidential to the owner of the ATM.
- l) ATMs at bank branches should be situated in such a manner as to permit access at reasonable times.
- m) Access to these ATMs should be controlled and secured so that customers can safely use them within the hours of operations.
- n) Deployers are to take adequate security steps according to each situation subject to adequate observance of standard security policies.
- o) Banks are encouraged to install cameras at ATM locations. However, such cameras should not be able to record the keystrokes of such customers.
- p) At the minimum, a telephone line should be dedicated for fault reporting, and such a number shall be made known to users to report any incident at the ATM. Such facility must be manned at all times the ATM is operational.

1.4.3 Internet Banking

Banks should put in place procedures for maintaining the bank's Web site which should ensure the following:

- a) Only authorized staff should be allowed to update or change information on the Web site.
- b) Updates of critical information should be subject to dual verification (e.g. interest rates).
- c) Web site information and links to other Web sites should be verified for accuracy and functionality.
- d) Management should implement procedures to verify the accuracy and content of any financial planning software, calculators, and other interactive programs available to customers on an Internet Web site or other electronic banking service.
- e) Links to external Web sites should include a disclaimer that the customer is leaving the bank's site and provide appropriate disclosures, such as noting the extent, if any, of the bank's liability for transactions or information provided at other sites.
- f) Banks must ensure that the Internet Service Provider (ISP) has implemented a firewall to protect the bank's Web site where outsourced.
- g) Banks should ensure that installed firewalls are properly configured and institute procedures for continued monitoring and maintenance arrangements are in place.
- h) Banks should ensure that summary-level reports showing web-site usage, transaction volume, system problem logs, and transaction exception reports are made available to the bank by the Web administrator.

1.4.4 Point of Sale Devices

- a) Deployers of point of sale devices at merchant locations including where such companies are agents of financial institutions must familiarize the merchant location with the safe operation of the Point of sale device.
- b) Private companies may deploy Point of Sale terminals, however such companies are required to sign agreements with banks that they are responsible to the merchant for transactions done on the terminals.
- c) Acquiring banks must ensure that the Point of sale device as well as other devices that capture information do not expose/store information such as the PIN number or other information classified as confidential. It must also ensure that a customer's PIN number cannot be printed at the point of sale for any reason whatsoever.
- d) Operators of point of sale devices are encouraged to work towards interoperability of cards from other schemes.

1.4.5 International Card Schemes: Banks may, subject to the approval of CBN, issue international cards (such as Visa, MasterCard etc.) to their customers. Such cards can be used wherever accepted, and payment on the cards can only

be done through an ordinary domiciliary account of the cardholder, or any other account that may be permitted by the CBN. Banks may subject to the prior approval of the CBN acquire international cards for which the merchant receives value in Naira at the applicable rate at the CBN for the currency on the date of settlement. For domestic credit cards, transaction fees should be denominated in naira.

1.4.6 Electronic Bill Presentment: Settlement should be done through the banking system. Third party (non-bank) providers must first enter into agency agreement with financial institutions that will act as the settlement organization.

1.4.7 Switches: Since switches connect consumers to their bank accounts to authorize transactions, only banks or a consortium of banks or agents for a bank or banking consortium or any other company approved by the CBN can act as a switching company. Switching companies will be licensed as EFT Messaging Companies. This provision is to minimize fraud and mitigate risk to the banking system. Third party providers are to submit themselves to the scrutiny of the Central Bank only after having signed a switching agreement with a bank or consortium of banks. The switching companies must meet the standards defined in 3rd party service provider agreement. Third parties or service providers must meet the guidelines as specified by the CBN.

- a) EFT companies and banks whose transactions are switched must maintain databases that are able to handle information relating to cardholders, merchants and bank transactions for no less than 180 days. In addition, they are required to preserve records of transactions for a minimum of five (5) years for audit purposes.
- b) Switch operators must submit to the CBN their security plans and periodic updates. Any security breach must have a record and such instances should be reported to the CBN for collective solutions and future prevention.
- c) Information on usage, volume of transactions and other relevant information should be supplied to the CBN on periodic basis for record purposes. In addition, information on instances of fraud and perpetrators should be reported to the CBN for record purpose.
- d) In order to promote interoperability, all licensed switch operators are encouraged to inter-connect to each other.

1.4.8 Internet Service Providers: Internet Service Providers (ISPs) should exercise due diligence to ensure that only websites of financial institutions duly licensed by the CBN are hosted on their servers. ISPs that host unlicensed financial institutions would therefore be held liable for all acts committed through the hosted websites.

1.4.9 Cards Schemes: Cards can only be issued by deposit taking institutions duly licensed by the CBN, however where cards are used in a closed environment, such as telephone cards issued by a telephone company to its own customers or a fuel station issuing cards to its customers, this is permissible. Any such card issued in a closed environment should not be used for the exchange of value outside the closed group.

- a) Banks must adopt a standard card numbering scheme. This is to ensure that cards issued by different banks are numbered in a unique manner, thereby preventing the possibility of two cards in the marketplace bearing the same card number.
- b) The CBN will issue the first six numbers for each card issuing organization followed by a card numbering sequence chosen by the bank.
- c) All cards must maintain a minimum of 9 digits and a maximum of twenty (20) characters. Banks that may consider the possibility of international acceptance of their cards must consider using a sixteen (16) digit numbering sequence.
- d) The CBN will utilize ISO card numbering specifications and all cards therefore will be listed in the international registry of card issuers making cards and the issuers in Nigeria easily identifiable to the international community.

1.4.10 Electronic Transfer of Funds: Only authorized financial institutions can undertake electronic transfer of funds on behalf of customers.

- a) Operators must ensure a safe and sound EFT network-switching environment, which with adequate internal controls, should minimize errors, discourage fraud and provide an adequate audit trail.
- b) Operators must conduct periodic control and evaluations of the switch and the network and ensure daily settlement of switch activity and balancing of network activity. The Central Bank of Nigeria must be notified of fees charged as well as changes to the fees charged for services.
- c) Management must ensure the existence of written and approved policies and procedures covering personnel, security controls, operations and disaster recovery, which must be enforced.
- d) EFT Operators must conform to guidelines for security and privacy policies established by the Central Bank of Nigeria.

1.5. Standards on Security and Privacy

1.5.1 Security Policy and Privacy

Banks should have in place a security policy duly approved by their Boards, and the policy should address the following issues:

- a) Basic approach to information security measures.
- b) The ICT systems that must be protected and the reasons for such protection.
- c) Priorities of information and information systems that must be protected.

- d) Involvement and responsibility of management and establishment of an information security coordination division.
- e) Checks by legal department and compliance with laws/regulations.
- f) The use of outside consultants.
- g) Identification of information security risks and their management.
- h) Impact of security policies on quality of service to the customers (for example, disabling an account after three unsuccessful logins may result in denial of service when it is done by somebody else mischievously or when restoration takes unduly long time).
- i) Decision making process of carrying out information security measures.
- j) Procedures for revising information security measures.
- k) Responsibilities of each officer and employee and the rules (disciplinary action, etc.) to be applied in each case.
- l) Auditing of the compliance to the security policy.
- m) User awareness and training regarding information security.
- n) Business Continuity Plans.
- o) Procedures for periodic review of the policy and security measures.
- p) Procedures for change and configuration management covering all facilities.

1.5.2 Standards on Identification

All users of critical devices on networks used for e-banking should to be uniquely identified to facilitate arrangements for authentication, access control, confidentiality demarcations and enforcement of security policies. A customer registration process primarily managed by a national root Certification Authority will ensure that all users and critical devices are uniquely identified and linked with all authorized identification systems (National Id, Passport, Driver's License, etc)

- a) All identities must be aged and renewed on expiry.
- b) Authentication: A minimum of two-factor authentication process is required for all user access to the services provided. Banks may need to consider the use of Public Key Infrastructure (PKI) for authentication of users for e-banking services.

1.5.3 Access Control: Banks should introduce logical access controls over ICT infrastructure deployed. Controls instituted by banks should be tested through periodic Penetration Testing, which should include but should not be limited to;

- a) Password guessing and cracking
- b) Search for back door traps in programs.
- c) Attempts to overload the system using Ddos (Distributed Denial of Service &DoS (Denial of Service) attacks.

- d) Check if commonly known vulnerabilities in the software still exist.
- e) Banks may for the purpose of such Penetration Testing employ external experts.

1.5.4 Security Log (audit Trail): All computer accesses, including messages received, should be logged. All computer access and security violations (suspected or attempted) should be reported and follow up action taken as the organization's escalation policy.

- a) Log of Messages: The banking applications run by the bank should have proper record keeping facilities for legal purposes.
- b) All received and sent messages must be kept in both encrypted and decrypted form. (When stored in encrypted form, it should be possible to decrypt the information for legal purpose by obtaining keys with owners' consent.)

1.5.5 Backup, recovery & business continuity: Banks should ensure adequate back up of data as may be required by their operations. Banks should also have, well documented and tested business continuity plans that address all aspects of the bank's business.

- a) Both data and software should be backed up periodically, the frequency of back up depending on the recovery needs of the application. Online / real time systems require frequent backups within a day. The back-up may be incremental or complete. Automating the backup procedures is preferred to obviate operator errors and missed back-ups.
- b) Recovery and business continuity measures, based on criticality of the systems, should be in place and a documented plan with the organization and assignment of responsibilities of the key decision making personnel should exist.
- c) An off-site back up is necessary for recovery from major failures/disasters to ensure business continuity. Depending on criticality, different technologies based on back-up, hot sites, warm sites or cold sites should be available for business continuity. The business continuity plan should be frequently tested.

1.6. Vendors and Outsourcing

- a) If a bank decides to use service providers or vendors to provide Electronic banking services, it must exercise appropriate due diligence in evaluating their reputation, financial status, and viability.
- b) Banks must ensure that the service providers and vendors can perform as promised and that they are capable of keeping abreast of new or changing technology.
- c) When contracting for Electronic banking services, banks must carefully consider how they intend to use third parties to design, implement, and support all or part of their Electronic banking systems.

- d) Banks must ensure that adequate controls are in place to monitor performance levels and to swiftly respond to any problem or emergency, by providing specific performance benchmarks to the service provider.
- e) Banks when outsourcing, must maintain control through a Service Level Agreement (SLA) over the services and products provided by third parties.
- f) When negotiating contracts, bank managements must confirm that responsibilities and accountability are clearly defined for each party.
- g) Banks must ensure that they could exercise the control necessary to properly manage the products or services.
- h) Control items must include, but not limited to, a bank's ability to perform audits or to obtain from the service provider or vendor independent internal control audits.
- i) Banks must establish controls that allow them to confirm third party recovery plans, review their financial condition, and establish data ownership with the third party.
- j) Banks must establish their rights, to the extent possible, in the event a third party fails to perform under the contract or fails altogether.
- k) Banks must consider the conditions under which they can terminate or change service providers or vendors without incurring substantial liability in the event plans change or performance standards are not met.
- l) Banks must ensure that contract specify insurance to be maintained by the service provider.
- m) Legal counsel must review the contract to ensure that they are legally enforceable and reasonably protect the bank from risks.
- n) Software escrow agreement must be entered into for turnkey e-banking software packages. The agreement must ensure that all relevant program files and documentation are kept current and completed.
- o) Where a vendor maintains the e-banking system operated by the bank in-house, the bank must ensure adequate controls over the vendors' access (including remote access) to the banks system to maintain or upgrade software.
- p) Activity logs must be maintained to monitor remote vendor access to the systems.
- q) Vendor software distribution procedure must be assessed for adequacy and each release accompanied by sufficient documentation.
- r) Banks must notify the Regulatory Authorities of applicable service relationships relating to e banking.

2.0 Monetary Policy

- a) Electronic money scheme operators must supply the Central Bank with statistical information, about the volume and value of their transactions, based on an agreed format.
- b) All categories of electronic money would be treated as part of the deposit liabilities of banks and subject to the application of reserve requirements.
- c) The settlement procedure for e-banking transactions must conform to existing regulations. Settlement should be only through clearing banks operating net settlement schemes with NIBSS to CBN in Lagos, and outside Lagos, through the CBN clearing houses, and other form of clearing and settlement arrangements as may be approved by CBN from time to time.
- d) Only licensed deposit taking institutions can issue electronic payment instruments
- e) Only institutions that are members of the cheque clearing system in the country are permitted to participate in inter-bank payment systems for e-banking.
- f) Issuer of electronic money would be subject to prudential supervision. In addition to this, international cooperation would be sought to take care of various supervisory issues that emerged from cross-border e-banking activities.

3.0 Legal Issues

- a) Banks are obliged to not only establish the identity of their customers (KYC principle) but also enquire about their integrity and reputation. To this end, accounts should be opened only after proper introduction and physical verification of the identity of the customer.
- b) Digital signature should not be relied on solely as evidence in e-banking transactions, as there is presently no legislation on electronic banking in Nigeria.
- c) There is an obligation on banks to maintain secrecy and confidentiality of customer's account. In e-banking scenario, there is the risk of banks not meeting the above account of breach of secrecy, denial of service etc. because of hacking/other technologies failures. Bank should, therefore, institute adequate risk control measures to manage such risks.
- d) Banks should protect the privacy of the customer's data by ensuring:
 - i. That customer's personal data are used for the purpose for which they are compiled.
 - ii. Consent of the customer must be sought before the Data is used.
 - iii. Data user may request, free to cost for blocking or rectification of inaccurate data or enforce remedy against breach of confidentiality.

- iv. Processing of children's data must have the consent of the parents and there must be verification via regular mail.
- v. Strict criminal and pecuniary sanctions are imposed in the event of default.
- e) In e-banking, there is very little scope for the banks to act on stop payment instructions from the customers, hence, banks should clearly notify the customers the time frame and the circumstances in which any stop-payment instructions could be accepted.
- f) While recognizing the rights of consumers under the Nigerian Consumer Protection Council Act, which also apply to consumer in banking services generally, banks engaged in e-banking should endeavour to insure themselves against risks of unauthorized transfers from customer's account's, through hacking, denial of services on account of technology failure etc., to adequate insulate themselves from liability to the customers.
- g) Agreements reached between providers and users of e-banking products and services should clearly state the responsibilities and liabilities of all parties involved in the transactions.

4.0 Regulatory and Supervisory Issues

4.1 Risk Management: in order to mitigate the risk associated with all e-banking businesses, banks should have in place a comprehensive risk management process that assesses risks, control risk exposure, and monitors risks. This comprehensive risk management framework should be integrated into the bank's overall risk management framework. The risk management process should be supported by appropriate oversight by the board of Directors and senior management and carried out by staff with the necessary knowledge and skills to deal with the technical complexities of new e-banking developments. Towards achieving this, banks should:

- a) Establish effective management oversight over the risks associated with e-banking activities, including the establishment of specific accountability, policies and controls to manage these risks.
- b) Establish a comprehensive and ongoing due diligence and oversight process for managing the bank's outsourcing relationships and other third-party dependencies supporting e-banking.
- c) Ensure that appropriate measures are in place to promote adequate segregation of duties within e-banking systems, databases and applications.
- d) Ensure that clear audit trails exist for all e-banking transactions.
- e) Develop appropriate incident response plans to manage, contain and minimize problems arising from unexpected events, including internal and external attacks that may hamper the provision of e-banking systems and services.

- f) Ensure that adequate information is provided on their websites to allow potential customers to make an informed conclusion about the bank's identity and regulatory status of the bank prior to entering into e-banking transactions.
- g) Provide customers with the option to decline from permitting the bank to share with third party for cross-marketing purposes any information about the customer's personal needs, interests, financial position or banking activity.
- h) Ensure that Customer data are not used for purposes beyond which they are specifically allowed or beyond which customers have authorized.

4.2 Introduction of New e-banking / Electronic Products and Service

The existing regulatory framework over banks would be extended to electronic banking. Therefore only banks, which are licensed, supervised and with physical presence in Nigeria, are permitted to offer electronic banking services in Nigerians. Virtual banks or banks that exist only in cyberspace are not allowed.

- a. The products / services can only be offered to the following classes of customers
 - i. Residents of Nigeria with a verifiable address within the geographic boundary of Nigeria.
 - ii. Any person residing physically in Nigeria as a citizen, under a resident permit or other legal residency designation under the Nigerian Immigration Act.
 - iii. Any person known herein as a "classified person" who neither meets condition (i) nor (ii) above but is temporarily in Nigeria may utilize e- banking services limited to acceptance services such as ATMs, POS terminals or other acceptance devices deployed by a regulated institution.
- b. The e-banking service should be offered in Naira only. Where such a service is to be provided in foreign currency, it should be to only the holders of ordinary domiciliary accounts, and conform with all other foreign exchange regulations.
- c. Electronic banking products and services should comply with the Money Laundering Act 1995 as amended and "Know Your Customer" (KYC) rules.
- d. Banks wishing to provide transactional and/or enhance existing electronic banking services shall submit to the CBN, an application describing the services to be offered/enhanced and how it fits into the bank's overall strategy. This shall be accompanied by a certification signed by its MD/CEO to the effect that the bank has complied with the following minimum pre-conditions:
 - i. That an adequate risk management process is in place to assess, control, monitor and respond to potential risks arising from the proposed electronic banking activities;

- ii. A report from an agreed ICT certification agency, confirming that corporate security policy and procedures that address all security issues affecting its electronic banking system, as contained in the Technology and Security guidelines, particularly the following, exist:
 - Authentication
 - Non-repudiation
 - Authorization
 - Integrity
 - Confidentiality
- iii. The system had been tested through appropriate systems testing and user acceptance testing and the test results are satisfactory
- iv. A business continuity planning process has been adopted including a section on electronic banking channels and systems.
- e. The following documents would need to accompany the request:
 - i. The resolution of the Board of the bank approving the decision to provide the service/products.
 - ii. A report on the electronic banking services to be offered or enhanced, the business objectives for such services and the corresponding procedures.
 - iii. The detailed features and mode of operating the scheme
 - iv. A description or diagram of the configuration of the bank's electronic banking system and its capabilities, showing:
 - How the electronic banking system is linked to other systems or the network infrastructure in the bank;
 - How transaction and data flow through the network;
 - The types of telecommunications channels and remote access capabilities (e.g. direct modem dial-in, internet access, or both);
 - The types of security controls/measures that are installed;
 - A list of software and hardware components indicating the purpose of the software and hardware in the electronic banking infrastructure;
- v. A detailed description of the bank's security policy/security organization including:
 - Definition of responsibilities for designing, implementing, and monitoring information security measures; and
 - Established procedures for evaluating policy compliance, enforcing disciplinary measures and reporting security violations;
- vi. copy of the draft contract agreement with the technical partners/Software vendors;

- vii. A brief description of the contingency and disaster recovery plans for electronic banking facilities and a plan resolve or address problems, such as complaints, errors and intrusions and the availability of back-up facilities;
- viii. A copy of the draft maintenance agreements with the software/hardware providers;
- ix. The schedule of proposed charges/fees
- x. The detailed cost implication, which should include 3 years' financial projection.
- f. The CBN, through Banking Supervision Department, would appraise the product/service as well as the applicant-bank's overall financial condition, and its compliance with the CBN rules and regulations based on the latest available Returns and Examination Report on the bank.

The CBN would also ensure that the applicant bank's overall financial condition can adequately support its electronic banking activities and that it has complied with certain comprehensive prudential requirements such as, but not limited to, the following:

- i. Minimum capital adequacy ratio for consecutive period of 6 months;
 - ii. Minimum Liquidity ratio for consecutive period of 6 months;
- Satisfactory solvency, liquidity and profitability positions; Satisfactory CAMEL composite rating
- iii. Has a sufficient free fund to undertake the required investment in the electronic banking infrastructure (Hardware, Software, Communications, etc.)
 - iv. That all outstanding major exceptions in the latest examination report of the bank have been addressed.
 - g. Banks with existing electronic banking services but who do not meet the prescribed prudential standards have six (6) months within which to show proof of improved overall financial condition and/or substantial compliance with CBN's prudential requirements, otherwise, their electronic banking activities will be temporarily suspended until such time that the same have been complied with.
 - h. Banks with existing electronic banking services that have met the prescribed prudential standards, but whose electronic banking services were previously not approved should within (6) months regularise their position by submitting all the required documentation for necessary approval.

This section of the e-banking Guidelines, in so far as it deals with the introduction of new products and services, supersedes the provisions of the circular on the introduction of new products dated 5th April, 2000 in so far as it is inconsistent herewith.

4.3 Reporting Requirements

- a) Banks are required to render separate returns on their e-banking activities to appropriate regulatory authorities as prescribed by the CBN from time to time
- b) Cases of frauds and forgeries relating to e-banking should be highlighted in the returns on frauds and forgeries.

4.4 Penalties

4.4.1 Sanctions, in the form of monetary penalties and/or suspension of the specific electronic banking activity(ies) or both, would be imposed on erring banks and/or their officers for failure to:

- a) Seek CBN approval before launching, implementing or, enhancing electronic banking services/products, and/or
- b) Submit within the prescribed deadline the required information/documents.

4.4.2 Monetary penalties will be imposed, in accordance with relevant sections of CBN Act/BOFIA 1991 as Amended, as follows:

- a) A one-time penalty on the officer/s and/or director/s responsible for failure to seek and obtain the prior approval of the CBN and/or non-submission of required information/documents.
- b) A daily penalty on the bank for failure to seek prior approval of the CBN and/or for non-submission of required information/documents, for the duration of the period of contravention starting from the day the offence was committed up to the time the same was corrected.

Chapter 29

Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria May 2014

TABLE OF CONTENTS

SECTION DESCRIPTION

1.0	Introduction
2.0	Board and Management
2.1	Responsibilities of the Board
2.2	Size and Composition
2.3	Separation of Powers
2.4	Appointment and Tenure
2.5	Board Committees
2.6	Board Meetings
2.7	Remuneration
2.8	Board Appraisal
3.0	Shareholders
3.1	Rights and Functions of Shareholders
3.2	Equity Ownership
3.3	Protection of Shareholder Rights
3.4	Meetings
3.5	Shareholder Associations
4.0	Rights of other Stakeholders
5.0	Disclosures in the Annual Report
5.1	Transparency and Integrity in Reporting
5.2	Whistle Blowing
6.0	Risk Management
7.0	Ethics & Professionalism and Conflict of Interest
7.1	Ethics & Professionalism
7.2	Conflict of Interest
8.0	Sanctions
9.0	Effective Date

1.0 INTRODUCTION

The term corporate governance refers to the rules, processes, or laws by which institutions are operated, regulated and governed. It is developed with the primary purpose of promoting a transparent and efficient banking system that will engender the rule of law and encourage division of responsibilities in a professional and objective manner.

Effective corporate governance practices provides a structure that works for the benefit of stakeholders by ensuring that the enterprise adheres to accepted ethical standards and best practices as well as formal laws.

A country's economy depends on the safety and soundness of its financial institutions. Thus the effectiveness with which the Boards of financial institutions discharge their responsibilities determines the country's competitive position. They must be free to drive their institutions forward, but exercise that freedom within a framework of transparency and effective accountability. This is the essence of any system of good corporate governance.

Corporate governance has received increased attention because of high-profile scandals involving abuse of corporate power and, in some cases, alleged criminal activity by corporate officers.

Following the conclusion of the consolidation programme in 2005, a Code of Corporate Governance for Banks in Nigeria was issued to the banking industry. The Code which became effective in April 2006 was designed to enhance corporate governance practices within the banking industry in view of the fact that governance mechanisms in banks was notably weak and Board members of financial institutions were unaware of their statutory and fiduciary responsibilities, and merely endorsed all proposals of executive

2.0 BOARD AND MANAGEMENT

2.1 Responsibilities of the Board and Management

2.1.1 The Board is accountable and responsible for the performance and affairs of the bank. Specifically, and in line with the provisions in the Companies and Allied Matters Act

(CAMA) 1990, Directors owe the bank the duty of care and loyalty and to act in the interest of the bank's employees and other stakeholders.

2.1.2 The Board shall define the bank's strategic goals, approve its long and short-term business strategies and monitor their implementation by management.

2.1.3 The Board shall determine the skills, knowledge and experience that members require and work effectively as a team to achieve the bank's objectives.

2.1.4 The Board shall ensure that it's human, material and financial.

Resources are effectively deployed towards the attainment of set goals of the bank.

2.1.5 The Board shall appoint the CEO as well as top management staff and establish a framework for the delegation of authority in the bank, which must comply with the provisions of the CBN's Circular on Harmonization of Job Roles in the Banking Industry.

2.1.6 The Board shall ensure that a succession plan is in place for the CEO, other executive Directors and top management regardless of their implications to the financial condition and going concern status of such institutions.

However, during the implementation of the code, it was observed that certain provisions could not be implemented by banks in view of their ambiguity and/or conflict with the provisions of the Companies and Allied Matters Act (CAMA) 1990. Furthermore, in 2009, a joint CBN/NDIC examination that led to the removal of 5 CEOs of banks in the country revealed, amongst others, poor corporate governance practices in the institutions. There was also the need to up-date the code in order to align it with contemporary developments and international best practices, hence the need for the current review.

Therefore, the revised Code provides clear guidelines on all aspects of governance and is expected to enhance Corporate Governance practices for banks in Nigeria.

The provisions of this Code represent the minimum standard which banks shall comply. Banks are however encouraged to aspire to higher standards.

1.2 COMPLIANCE

1.2.1 This code shall apply to banks and discount houses.

1.2.2 External auditors of banks shall report annually to the CBN, the extent of the bank's compliance with the provisions of this Code. The external auditor must have adequate experience/knowledge and competence to assess the governance systems in banks and discount houses.

2.1.8 Members of the Board are severally and jointly liable for the activities of the bank.

2.1.9 The Board shall ensure strict adherence to the Code of Conduct for bank Directors.

2.2 Size and Composition

2.2.1 The size of the Board of any bank or discount house shall be limited to a minimum of five (5) and a maximum of twenty (20).

2.2.2 Members of the Board shall be qualified persons of proven integrity and shall be knowledgeable in business and financial matters, in accordance with the extant CBN Guidelines on Fit and Proper Persons Regime.

2.2.3 The Board shall consist of Executive and Non-Executive Directors. The number of Non-Executive Directors shall be more than that of Executive Directors.

2.2.4 The Board of banks shall have at least two (2) Non-Executive Directors as Independent Directors while that of discount houses shall have at least one (1) as defined in the CBN guidelines on the Appointment of Independent Directors

2.3 Separation of Powers

2.3.1 The positions of the Board Chairman and the Managing Director/Chief Executive Officer (MD/CEO) shall be separate.

No one person shall combine the two positions in any bank at the same time. For the avoidance of doubt, no executive Vice Chairman shall be recognized in the Board structure.

2.3.2 Where the bank is a member of a holding company, not more than two extended family members shall be allowed to serve on the Boards of the bank and the holding company.

2.3.3 No two members of the same extended family shall occupy the positions of Chairman and MD/CEO or Executive Director of the bank and Chairman or MD/CEO of a bank's subsidiary at the same time.

2.4 Appointment and Tenure

2.4.1 Procedure for appointment to the Board shall be formal, transparent and documented.

2.4.2 Existing CBN guidelines on appointment to the Board of financial institutions shall continue to be applied.

2.4.3 To ensure continuity and injection of fresh ideas, Non-Executive Directors of banks shall serve for a maximum of three (3) terms of four (4) years each.

2.4.4 Track record of appointees shall be an additional eligibility requirement. Such records shall cover both integrity and past performance, in accordance with the extant CBN Guidelines on Fit and Proper Persons Regime.

2.4.5 The tenure of the CEO of a bank shall be in accordance with the terms of engagement with the bank but subject to a maximum period of ten (10) years. Such tenure may be broken down into periods not exceeding five (5) years at a time. Such a CEO shall not be eligible for appointment in that capacity in the bank or its subsidiaries.

2.4.6 No Director, either Executive or Non-Executive, shall be allowed to serve on the Boards of a bank and a holding company within a Group at the same time.

2.4.7 To enhance the effectiveness of Directors, the bank shall allow Directors access to corporate information under conditions of confidentiality; provide

training and continuing education arrangements and facilitate access to independent professional advice.

2.5 Board Committees

2.5.1 The Board shall establish at a minimum the following Committees:

- i) A Committee responsible for the oversight of Risk Management and Audit functions. These functions may be carried out by one committee, particularly in small institutions. This is without prejudice to the requirements of CAMA on the Statutory Audit Committee which is not a board committee.
- ii) The Chief Risk Officer and Chief Internal Auditor must report directly to Risk Management and Board Audit Committees respectively.
- iii) Board Governance and Nominations Committee

2.5.2 All Board Committees must have a charter which must be submitted to the CBN for approval.

2.5.3 The Chairman of the Board shall not be a member/chairman of any Board Committee.

2.5.4 Board Committees shall be headed by Non-Executive Directors.

2.5.5 The Board Audit Committee (BAC) shall have unlimited access to the financial records of the bank including external auditors' reports.

2.6 Board Meetings

2.6.1 To effectively perform its oversight function and monitor management's performance, the Board shall meet at least once a quarter.

2.6.2 Every Director is required to attend all meetings of the Board and Board Committees. In order to qualify for re-election, a Director must have attended at least two-thirds of all Board and Board Committee meetings.

2.6.3 The Board shall disclose, in the Corporate Governance Section of the Annual Report, the total number of Board meetings held in the financial year and attendance by each Director.

2.7 Remuneration

2.7.1 Banks shall align executive and Board remuneration with the long term interests of the bank and its shareholders.

2.7.2 Levels of remuneration shall be sufficient to attract, retain and motivate executive officers of the bank and this shall be balanced against the bank's interest in not paying excessive remuneration.

2.7.3 Where remuneration is linked to performance, it shall be designed in such a way as to prevent excessive risk taking.

2.7.4 Every bank shall have a remuneration policy put in place by the Board of Directors, which shall be disclosed to the shareholders in the annual report.

2.7.5 A Committee of Non-Executive Directors shall determine the remuneration of executive Directors.

- 2.7.6 Executive Directors shall not receive sitting allowances and Directors' fees.
- 2.7.7 Non-Executive Directors' (Non-EDs) remuneration shall be limited to Directors' fees, sitting allowances for Board and Board Committee meetings and reimbursable travel and hotel expenses. Non-EDs shall not receive benefits, salaries, etc, whether in cash or in kind, other than those mentioned above.
- 2.7.8 Where stock options are adopted as part of executive remuneration or compensation, the Board shall ensure that they are not priced at a discount except with the authorization of the relevant regulatory agencies.
- 2.7.9 Share options shall be tied to performance and subject to the approval of the shareholders at AGMs.
- 2.7.10 Share options shall not be exercisable until one year after the expiration of the tenure of the Director.
- 2.7.11 Banks shall disclose in their annual reports, details of the shares held by Directors and their related parties.
- 2.7.12 Where there is a Remuneration Committee in addition to the three Committees prescribed in Section 2.5.1, the membership shall comprise Non-EDs only while the Board Governance and Nomination Committee shall have a combination of Executive and Non-EDs. However, where both Committees are combined, its membership shall be drawn only from Non-EDs.
- 2.8.1 There shall be annual Board and Directors' review/appraisal covering all aspects of the Boards' structure, composition, responsibilities, processes and relationships, as may be prescribed by the CBN.
- 2.8.2 Each Board should identify and adopt, in the light of the company's future strategy, its critical success factors or key strategic objectives.
- 2.8.3 The annual Board appraisal shall be conducted by an independent consultant. The report shall be presented to shareholders at the AGM and a copy forwarded to the CBN.

3.0 *SHAREHOLDERS*

3.1 Rights and Functions of Shareholders

- 3.1.1 Shareholders shall have the right to obtain relevant and material information from the bank on a timely and regular basis.
- 3.1.2 Shareholders shall have the right to participate actively and vote in general meetings.
- 3.1.3 In addition to the traditional means of communication, banks shall have a website and are encouraged to communicate with shareholders via the website. Such information shall include major developments in the bank, risk management practices, executive compensation, local and offshore branch expansion, establishment of investment in subsidiaries and associates, Board

and top management appointments, sustainability initiatives and practices, etc.

3.2 Equity Ownership

3.2.1 An equity holding of 5% and above by any investor shall be subject to CBN's prior approval. Where such shares are acquired through the capital market, the bank shall apply for a no objection letter from the CBN immediately after the acquisition.

3.2.2 In order to discourage government(s) from having majority shareholding in banks, government(s) direct and indirect equity holding in any bank shall be limited to 10%.

3.3 Protection of Shareholders' Rights

3.3.1 Every shareholder shall be treated fairly.

3.3.2 The Board shall ensure that minority shareholders are adequately protected from overbearing influence of controlling shareholders controlling shareholders

3.3.3 The Board shall ensure that the bank promptly provides to shareholders documentary evidence of ownership interest in the bank such as share certificates, dividend warrants and related instruments. Where these are rendered electronically, the Board shall ensure that they are sent in a secure manner.

3.4 Meetings

3.4.1 Notice of general meetings shall be as prescribed by the Companies and Allied Matters Act (CAMA) 1990.

3.4.2 The Board shall ensure that the venue of a general meeting shall be convenient and easily accessible to the majority of shareholders.

3.4.3 The Board shall ensure that unrelated issues for consideration are not lumped together at general meetings, statutory business shall be clearly and separately set out. Separate resolutions shall be proposed and voted on each substantial issue.

3.4.4 The Board shall ensure that decisions reached at general meetings are properly and fully implemented.

3.5 Shareholders' Associations

3.5.1 The Board shall ensure that dealings of the bank with shareholders' associations are in strict adherence with the Code for Shareholders' Associations published by the Securities and Exchange Commission. Where a bank is not listed, its dealings with the Association shall be transparent and in line with the relevant governance codes.

4.0 *RIGHTS OF OTHER STAKEHOLDERS*

4.1.1 Stakeholders shall be able to freely communicate their concerns about illegal or unethical practices to the Board.

Where such concerns border on the activities of the Board, such individuals shall have recourse to CBN in accordance with Section 3.4 of the provisions of the Whistle Blowing Guidelines.

4.1.2 Where stakeholder interests are protected by law, stakeholders shall have the opportunity to obtain effective redress for violation of their rights.

4.1.3 Banks shall demonstrate good sense of corporate social responsibility to their stakeholders such as customers, employees, host communities, and the general public.

5.0 *DISCLOSURE AND TRANSPARENCY*

5.1.1 In order to foster good corporate governance, banks are encouraged to make robust disclosures beyond the statutory requirements in BOFIA 1991 as amended, CAMA 1990 and other applicable laws.

5.1.2 Disclosure in the annual report shall include, but not limited to, material information on:

- a) Major items that have been estimated in accordance with applicable accounting and auditing standards.
- b) Rationale for all material estimates;
- c) Details on Directors:
 - i) The bank's remuneration policy for members of the Board and executives;
 - ii) Total Non-EDs' remuneration, including fees, allowances, etc.;
 - iii) Total Executive compensation, including bonuses paid/payable;
 - iv) Details and reasons for share buy-backs, if any, during the period under review;
 - v) Board of Directors' performance evaluation; and
 - vi) Details of Directors, shareholders and their related parties who own 5% and above of the banks' shares as well as other shareholders who, in concert with others, control the bank.
- d) Corporate governance:
 - i) governance structure;
 - ii) composition of Board Committees including names of chairmen and members of each Committee
- e) Risk Assets:
 - i) Concentration of assets, liabilities and off-balance sheet engagements by sector, geography, and product.
 - ii) Loan quality.
 - iii) Lending/borrowing to/from subsidiaries and associates.

- iv) Loans and advances/funding or commitment lines from institutions outside Nigeria.
- v) Related party transactions.
- vi) Insider-related credits in accordance with the extant CBN circular.
- f) Risk management:
 - i) All significant risks.
 - ii) Risk management practices indicating the Board's responsibility for the entire process of risk management as well as a summary of external auditors' observed lapses thereon.
- g) Information on strategic modification to the core business.
- h) All regulatory/supervisory contraventions during the year under review and infractions uncovered through whistle blowing, including actions taken thereon.
- i) Regulatory Sanctions and Penalties
- j) Capital Structure/Adequacy.
- k) Any service contracts and other contractual relationships with related parties.
- l) Frauds and Forgeries.
- m) Contingency Planning Framework.
- n) Any matter not specifically mentioned in this code but which is capable of affecting in a significant form, the financial condition of the bank or its status as a going concern.

5.2 Transparency and Integrity in Reporting

5.2.1 Banks shall have a structure to independently verify and safeguard the integrity of their financial reporting, which shall:

- i) entail the review and consideration of the financial statements by the BAC; and
- ii) enhance the independence and competence of the bank's external auditors.

5.2.2 The BAC shall be structured in such a way that it:

- i) consists only of Non-Executive Directors;
- ii) is chaired by an independent Director;
- iii) has at least three members.

5.2.3 The BAC shall be of sufficient size, independence and technical expertise to discharge its mandate effectively.

5.2.4 The BAC shall include members who are financially literate (that is, be able to read and understand financial statements).

At least one of the members shall have relevant qualifications and experience (that is, shall be a qualified accountant or other finance professional with experience in financial and accounting matters).

5.2.5 The BAC shall review the integrity of the bank's financial reporting and oversee the independence of the external auditors.

5.2.6 The BAC shall meet at least once every quarter.

5.2.7 The appointment and removal of the Chief Compliance Officer/ Head of Internal Audit shall be the responsibility of the Board subject to CBN's ratification. The CBN must be notified of any change and reasons thereof, within fourteen (14) days of such change.

5.2.8 The qualification and experience of the Chief Compliance Officer/ Head of Internal Audit shall be in accordance with the provisions of the CBN's Competency Framework for the Banking Industry.

Chief Compliance Officers (CCO) shall, in addition to monitoring compliance with Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) requirements, monitor the implementation of the corporate governance code.

5.2.9 Appointment of external auditors shall be approved by the CBN.

5.2.10 External auditors shall render reports to the CBN on banks' risk management practices, internal controls and level of compliance with regulatory directives.

i) The external auditor shall review the work of the internal auditor on each of the bank's key risk elements to cover risk identification, measurement, monitoring and control. The key risk elements as specified in the Risk Based Supervision framework are strategic, operational, liquidity, legal, market and credit risks.

ii) The external auditor shall review compliance with policies and internal control procedures put in place by the Board to manage and mitigate the institution's risks.

iii) The external auditors shall report on the level of each key risk element as well as the composite risk profile of the bank and make recommendations to the Board to enhance the effectiveness of risk management processes in the bank.

iv) Copies of their report shall be forwarded to the CBN together with the external auditor's management letter on the bank's audited financial statements

5.2.11 External auditors of banks shall not provide client services that shall amount to conflict of interest including the following:

i) Bookkeeping or other services related to the accounting records or financial statements of the audit client;

ii) Appraisal or valuation services, fairness opinion or contribution-in-kind reports;

iii) Actuarial services;

iv) Internal audit outsourcing services;

v) Management or human resource functions including broker or dealer, investment banking services and legal or expert services.

5.2.12 The tenure of auditors in a given bank shall be for a maximum period of ten (10) cumulative years after which the audit firm shall not be reappointed in the bank until after a period of another ten (10) consecutive years.

5.2.13 An audit firm shall not provide audit services to a bank if one of the bank's top officials (Directors, Chief Finance Officer, Chief Audit Officer, etc.) was employed by the firm and worked on the bank's audit during the immediate past two (2) years.

5.3 Whistle-Blowing

5.3.1 Banks shall have a whistle-blowing policy made known to employees and other stakeholders.

5.3.2 The policy shall contain mechanisms, including assurance of confidentiality, that encourage all stakeholders to report any unethical activity to the bank and/or the CBN.

6.0 RISK MANAGEMENT

6.1.1 Every bank shall have a risk management framework specifying the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risks inherent in its operations.

6.1.3 Risk management policies shall reflect the bank's risk profile and appetite and clearly describe all elements of the risk management as well as its internal control system.

6.1.4 Banks shall disclose a summary of its risk management policies.

6.1.5 A bank's risk management policies shall clearly describe the roles and responsibilities of the Board, BRMC, management and internal audit function.

6.1.6 As part of its oversight for the risk management and internal control system, the Board shall review the effectiveness of the implementation of that system at least annually. Ultimate responsibility for risk oversight and risk management rests with the full Board.

6.1.7 It is the responsibility of the Board to prepare the bank's risk management framework as well as oversight responsibility for its implementation. However, the management has the responsibility for the effective implementation of the framework.

6.1.8 The composition of the BRMC shall include at least 2 non-EDs and the executive Director in charge of risk management but chaired by a non-ED.

6.1.9 External auditors shall render annually, reports on the bank's risk management practices to the CBN.

7.0 ETHICS & PROFESSIONALISM AND CONFLICT OF INTEREST

7.1 Ethics & Professionalism

7.1.1 To make ethical and responsible decisions, banks shall comply with their legal obligations and have regard to the reasonable expectations of their stakeholders.

7.1.2 Banks shall establish a code of conduct and disclose in the code or a summary of the code such information as:

- i) the practices necessary to maintain confidence in the bank's integrity;
- ii) the practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders;
- iii) the responsibility and accountability of individuals reporting and investigating reports of unethical practices.

7.1.3 The Code should:

- a) commit the bank, its Board and management (and employees) to the highest standards of professional behaviour, business conduct and sustainable business practices;
- b) be developed in collaboration with management and employees;
- c) receive commitment for its implementation from the Board and the Managing Director/Chief Executive Officer and individual Directors of the company;
- d) be sufficiently detailed as to give clear guidance to users including advisers, consultants and contractors;
- e) be formally communicated to the persons to whom it applies; and
- f) be reviewed regularly and updated when necessary.

7.1.4 Banks shall establish a policy concerning trading in the bank's securities by Directors, senior executives and employees, and disclose the policy or a summary of that policy.

7.1.5 The trading policy shall contain appropriate compliance standards and procedures to ensure that the policy is properly implemented. There shall also be an internal review mechanism to assess compliance and effectiveness. This review may involve an internal audit function.

7.1.7 Banks shall publish the policy concerning the Issue of Board and employee trading in its securities.

7.2 Conflict of Interest

7.2.1 Banks shall adopt a policy to guide the Board and individual Directors in conflict of interest situations.

7.2.2 The Board of Directors shall be responsible for managing conflicts of interest.

7.2.3 Directors shall promptly disclose to the Board any real or potential conflict of interest that they may have regarding any matter that may come before the Board or its Committees.

7.2.4 Directors shall abstain from discussions and voting on any matter in which they have or may have a conflict of interest.

7.2.5 Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow Director, have a responsibility to promptly raise the issue for clarification, either with the Director concerned or with the Chairman of the Board.

7.2.6 Disclosure by a Director of a real, potential or perceived conflict of interest or a decision by the Board as to whether a conflict of interest exists shall be recorded in the minutes of the meeting.

8.0 SANCTIONS

8.1.1 Compliance with the code is mandatory for all banks and discount houses.

8.1.2 Returns on the status of each institution's compliance with the code shall be rendered to the CBN at the end of every quarter or as may be specified from time to time by the CBN.

8.1.3 Failure to comply with the code will attract appropriate sanctions in accordance with Section 60 of BOFIA 1991 as amended or may be specified in any applicable legislation or regulation.

9.0 EFFECTIVE DATE

9.1.1 This code shall take effect from October 1, 2014 and supersedes our "Code of Corporate Governance for Banks in Nigeria Post Consolidation" that became effective on April 3, 2006.

May 16, 2014

Circular to all Banks and Discount Houses

CENTRAL BANK OF NIGERIA CODE OF CORPORATE GOVERNANCE FOR BANKS AND DISCOUNT HOUSES IN NIGERIA, 2014

Further to the receipt of stakeholders comments on the exposure draft on the reversed of Code of Corporate Governance for Banks and Discount Houses in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry, the CBN has concluded review of the Code and forward it herewith or compliance.

Kindly note that the revised Code of Corporate Governance aims to align the code with current realities and global best practice, eliminate perceived ambiguities and strengthen governance practices.

To monitor its full implementation, banks and discount houses are required to 'submit quarterly returns on their compliance with the provisions of the Code. The returns should reach the Director, Financial Policy and Regulation Department not later than 7 days after the end of each quarter.

As specified in Sections 3.3 and 3.4 of the Whistle Blowing Guidelines, we provide herewith the email address: anticorruptionunit@cbn.gov.ng for whistle blowing reports to the CBN. Accordingly, banks and other financial institutions are enjoined to avail this e-mail to their stakeholders.

This Code supersedes the one issued in March 2006 and with the Whistle Blowing Guidelines shall be deemed to take effect from October 1, 2014.

Thank you.

Kevin N. Amugo, Director,
Financial Policy & Regulation Department

Chapter 30

Guidelines for Whistle-Blowing For Banks and Other Financial Institutions in Nigeria, 2014

1.0 Introduction

The prevalence of misconduct in organizations, particularly banks and other financial institutions, in the recent past underscores the need to institute rigorous policies to allow employees and other stakeholders bring unethical and illegal practices to the fore to minimize the damage such misconduct can cause to different stakeholders. The banking system relies on the effective operation of a range of “integrity systems” for keeping the institutions and their management honest and accountable. One of such systems is Whistle-blowing.

Whistle-blowing, therefore, is the reporting of alleged unethical conduct of employees, management, directors and other stakeholders of an institution by an employee or other person to appropriate authorities. A whistle-blower is any person (s) including the employee, management, directors, depositors, service providers, creditors and other stakeholder(s) of an institution who reports any form of unethical behaviour or dishonesty to the appropriate authority.

The objective of whistle-blowing is to encourage stakeholders to bring unethical conduct and illegal violations to the attention of an internal and or external authority so that action can be taken to resolve the problem. This will minimize the institution’s exposure to the damage that can occur when internal mechanisms are circumvented. It will also demonstrate to stakeholders that the institution is serious about adherence to codes of ethics and conduct.

It is believed that an effective whistle-blowing mechanism in banks and Other Financial Institutions (OFIs) in the country would go a long way in entrenching good corporate governance.

However, in order to gain the protection afforded to whistle-blowers by this guidelines, such disclosures must actually be made in good faith and the information provided must also be substantially true/reliable.

The provisions of these Guidelines represent the minimum standard of whistle-blowing which banks shall comply with. Banks and other financial institutions are however encouraged to aspire to higher standards.

1.2 Compliance

1.2.1 The provisions of these Guidelines shall be observed by all financial institutions under the supervisory purview of the Central Bank of Nigeria (CBN).

1.2.2 Compliance shall be mandatory with effect from October 1, 2014.

1.2.3 Banks and Other Financial Institutions are expected to forward copies of their whistle-blowing guidelines to the CBN within three months, effective from the date of issuance of the guidelines. These guidelines shall be updated from time to time as the need arises.

1.2.4 Banks and Other Financial Institutions shall render quarterly reports on their compliance with the provisions of the whistle-blowing guidelines along with their corporate governance compliance status returns.

1.2.5 The external auditor of each bank and other financial institution shall report annually to the CBN, the extent of the bank's and other financial institution's compliance with the provisions of these Guidelines.

2.0 SCOPE OF POLICY

These Guidelines are designed to enable stakeholders of banks and other financial institutions to report acts of impropriety to appropriate authorities. This may include any of the following:

- All forms of financial malpractice or impropriety or fraud;
- Failure to comply with a legal obligation or Statutes;
- Actions detrimental to Health & Safety or the environment;
- Any form of criminal activity;
- Improper conduct or unethical behaviour;
- Failure to comply with regulatory directives;
- Other forms of corporate governance breaches;
- Connected transactions;
- Insider abuses
- Non-disclosure of interest;
- Attempts to conceal any of these, etc.

3.0 WHISTLE - BLOWING PROCEDURES

3.1 Banks and other financial institutions shall have a whistle-blowing policy which shall be made known to employees, management, directors and other stakeholders such as contractors, shareholders, job applicants and the general public. The policy should be disclosed in their web sites.

- 3.2 It is the responsibility of the board to implement such a policy and to establish a whistle-blowing mechanism for reporting any illegal or unethical behaviour.
- 3.3 Banks and other financial institutions shall establish whistle-blowing procedures that encourage stakeholders by assurance of confidentiality, to report any unethical activity/breach of these Guidelines using, among others, a dedicated email or hotline to the bank, other financial institution and the CBN.
- 3.4 The whistle-blowing mechanism shall include a dedicated “hot-line” or e-mail address and other electronic devices that could be used anonymously to report unethical practices.
- 3.5 The Head of Internal Audit shall review reported cases and recommend appropriate action to the MD/CEO and where issues affect Executive Management, such issues should be referred to the Board. The Board or CEO shall take appropriate action to redress the situation within a reasonable time.
- 3.6 The Head of Internal Audit shall provide the Chairman of the Board Audit Committee with a summary of cases reported and the result of the investigation.
- 3.7 A whistle-blower shall disclose any information connected with the activities of the bank or other financial institution which indicates any of the following:
- i) that an infraction has been committed;
 - ii) that a person has failed to comply with banking laws, internal policies and procedures, etc.; and
 - iii) that someone has concealed matters falling within (i) or (ii) above.
- 3.8 A disclosure is deemed to have been made in accordance with this section if the whistle-blower discloses to the bank, other financial institution, CBN, and/or other appropriate agencies or exercise any other lawful option provided that such disclosure is:
- i) true; and
 - ii) reasonable;
- 4.0 PROTECTION OF THE WHISTLE-BLOWER*
- 4.1 These Guidelines is designed to offer protection to whistle- blower(s) who disclose such concerns provided the disclosure is made:
- a) in the reasonable belief that it is intended to show malpractice or impropriety; and
 - b) to an appropriate person or authority.

- 4.2 Banks and other financial institutions shall treat all disclosures resulting from whistle-blowing in a confidential manner. The identity of the whistle-blower shall be kept confidential.
- 4.3 Stakeholders are encouraged to disclose their name when filing reports to make their reports more credible. However, anonymous disclosures may be considered on discretionary basis taking into account the following factors:
- a) the seriousness of the issues;
 - b) the significance and credibility of the concern; and
 - c) the possibility of confirming the allegation.
- 4.4 In making a disclosure through whistle-blowing, the individual should exercise due care in reporting his concern. If, however, an individual makes malicious allegations, and particularly if he or she persists with making them, no action shall be taken.
- 4.5 No bank or other financial institution shall subject a whistle-blower to any detriment whatsoever on the grounds that s/he has made a disclosure in accordance with the provisions of these Guidelines.
- 4.6 Where a whistle-blower has been subjected to any detriment in contravention of the above, s/he may present a complaint to the CBN. This is without prejudice to the right of the whistle-blower to take appropriate legal action.
- 4.7 An employee who has suffered any detriment by reason of disclosure made pursuant to the provision of these Guidelines shall be entitled to compensation and/or reinstatement provided that in the case of compensation, the employee's entitlement shall be computed as if he had attained the maximum age of retirement or had completed the maximum period of service, in accordance with his condition of service. For other stakeholders, the whistle-blower shall be adequately compensated.
- 4.8 Any bank or other financial institution which contravenes the provision of this section of the Guidelines will be sanctioned in line with Section 60 of the Banks and Other Financial Institutions Act 1991 (as amended).
- 4.9 For the purpose of these Guidelines, the word "detriment includes dismissal, termination, redundancy, undue influence, duress, withholding of benefits and/or entitlements and any other act that has negative impact on the whistle-blower.
- 4.10 Banks and other financial institutions shall make quarterly returns to the CBN and NDIC on all whistle-blowing reports and corporate governance related breaches.
- 4.11 Banks and other financial institutions shall include a whistle-blowing compliance status report in their audited financial statements.

- 4.12 Banks and other financial institutions should review their whistle-blowing policies every three (3) years and notify the regulatory authorities of all such reviews.

Chapter 31

Nigeria Financial Intelligence Unit Regulation, 2015

Arrangement of Regulations

Regulations

1. The Nigeria financial intelligence unit.
2. Functions of the NFIU.
3. NFIU to develop and promote strategic partnerships.
4. Submission of Reports to the Attorney-General.
5. Operational autonomy of the NFIU.
6. Powers of the NFIU.
7. The Director of the NFIU.
8. Removal of the Director from office.
9. Other staff of the NFIU.
10. Management structure of the NFIU.
11. Staff Regulations.
12. Pension.
13. Funds of the NFIU.
14. Annual Reports.
15. Directives of general character.
16. Miscellaneous.
17. Citation.

NIGERIA FINANCIAL INTELLIGENCE UNIT REGULATION, 2015

[7th Day of May, 2015]

WHEREAS section 1 (2) (c) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 provides that the commission is the designated Financial Intelligence Unit in Nigeria, which is charged with the responsibility of co-ordinating various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria;

WHEREAS section 12 (2) of the Economic and Financial Crime Commission (Establishment) Act, 2004 provides for the establishment of Units to facilitate the effective conduct of the functions of the Commission;

WHEREAS section 23 of the Money Laundering (Prohibition) Act, 2011 (AS Amended) vests in the Attorney- General of the Federation and Minister of Justice (“Attorney-General”), powers to make orders, rules, guidelines and regulations as are necessary for the efficient implementation of the provisions of the Money Laundering (Prohibition) Act, 2011 (As Amended).

AND WHEREAS section 43 of the Economic and Financial Crimes Commission (Establishment) Act, 2004 vests in the Attorney-General powers to make rules or regulations with respect to the exercise of duties, functions or powers of the Commission; NOW THEREFORE, in exercise of the powers conferred by section 23 of the Money Laundering (Prohibition) Act, 2011 (As Amended), section 43 of Economic and Financial Crimes Commission (Establishment) Act, 2004, the Attorney-General in consultation with relevant stakeholders, make the following regulations -

1. There shall continue to be known as the Nigerian Financial Intelligence Unit (in these Regulation referred to as the “NFIU”), which shall be the Central Authority in Nigeria responsible for requesting, receiving, analysing and disseminating of financial information to law enforcement agency, supervisory and regulatory authorities
2. The NFIU shall-
 - a) Receive and collect currency Transactions Reports, Suspicious Transaction Reports and other information, relevant to anti-money laundering and combating of terrorist financial activities from financial institutions, designated non-financial institutions and law enforcement agencies in accordance with the provisions of the Money Laundering (Prohibition) Act and any other law that maybe enacted in that regard by the National Assembly;
 - b) Receive reports on cross-border movement of currency and monetary instruments including reports involving the transfer to, or from a foreign country of funds, or securities;
 - c) Analyse and assess the information and it receive;
 - d) Review supervisory reports and criminal referrals;
 - e) Receive declarations made to the Nigeria Custom Services, pursuant to the Foreign Exchange (Monitoring and, Miscellaneous Prohibitions) 1995 and the Money Laundering (Prohibition) Act, 2011 (As amended);
 - f) Issue to financial institution and designated non-financial institution such guidelines as it considers appropriate to combat money laundering and financing of terrorism.

- g) Periodically issue circulars and guidelines to financial institutions and designated non-financial institutions.
 - h) Maintain a comprehensive financial intelligence database, for information collection and exchange with counterpart Financial Intelligence Units and law enforcement agencies around the world;
 - i) Maintain a network and link of information with the regulatory authorities and law enforcement agencies domestically and internationally to the extent permissible by national legislation;
 - j) Advise the government and regulatory authorities on the prevention and combating of economic and financial crimes;
 - k) Ensure compliance by financial institution and designated non-financial institutions with their obligations under the provisions of the Money Laundering (Prohibition) Act;
 - l) Monitor and undertake on emerging money laundering techniques and patterns;
 - m) Collaborate with law enforcement agencies on money laundering investigation and the prosecution of economic and financial crimes;
 - n) Promote public awareness and understanding of matters relating to economic and financial crimes including money laundering and financing of terrorist activities
 - o) Trial money transactions in banks and other financial institutions;
 - p) Enhance effectiveness and capacity in detection and the prevention of economic and financial crimes;
 - q) Enhance and supplement the financial sector supervisions;
 - r) facilitate the implementation of money policies by discouraging the development of the underground economy;
 - s) Promote “know your customer” (KYC) principles and “customer due diligence” (CDD) culture in financial designated non-financial institutions in accordance with the provisions of the Money Laundering (Prohibition) Act; and
 - t) Do any other thing that is necessary or expedient for carrying out its functions and objectives under these Regulations.
3. The NAU shall develop and promote strategic partnerships and better co-operation with the civil society in particular, the organized private sector, the news media and community based associations, on Anti-Money Laundering and combating” of Financial of Terrorism (AML/CFT) issues.
 4. The NFIU shall submit general regular reports on all AML/CFT activities and developments in the country to the Attorney-General.

5. In carrying out the functions under these regulations the NFIU shall be operationally autonomous and independent, and shall not be subject to the direction or control of any other authority except on matters of administration or policy oversight functions of the Economics and Financial Crimes Commission Board (“the Board”).
6. The NFUI shall have powers to-
 - a) Conduct analysis into suspected case of money laundering, terrorist financing, financing, financing of proliferations of weapons mass destruction and non-compliance with the provision of the money laundering (prohibition) Act and the Terrorist Prevention (Freezing of International Terrorist Funds and other Related Measures) Regulation, 2013;
 - b) Serve as the secretariat to the Nigeria Sanction Committee and the Inter Ministerial Committee on AML/CFT matter in Nigeria;
 - c) Without hindrance, share information or intelligence with other FIUs either in response to a request made to it or in a spontaneous manner;
 - d) Receive requests for information directly from other FIUs and domestic stake holder agencies and process same in a confidential and secure manner in line with Egmont Group principle and procedure information exchange and global practices;
 - e) Demand for and obtain additional information from any entity within or outside Nigeria where it considers such additional information expedient to the effective performance of its duties;
 - f) Enter into memorandum of understanding or such other arrangement in domestic stake holder agencies, or Financial Intelligence Units or Institution worldwide as will enable it to carry out its functions effectively; and
 - g) Collaborate with the Central Bank of Nigeria and other regulatory or supervisory authorities in the conduct of anti-money laundering and combating the financing of terrorism focus examination of financial institutions and designated non-financial institution.
7. - (1) There shall be for the NFIU a Director who shall be the Chief Executive and Accounting Officer of the NAU and who shall be appointed by the board, subject to the approval of the Attorney-General.
 - 1) The Director of the NFIU shall be –
 - a) A person of proving integrity with cognate experience in legal matters, financial intelligence or general security intelligence;
 - b) Responsible for the day to day administration of the NAU and the keeping of its books and records;

- c) Appointed for a term of five years in the first instance and may be re-appointed for a further term of five years and no more subject to satisfactory performance; and
 - d) subject to the express supervision of the Board.
8. (1) The Director of the NAU shall cease to occupy the office of the Director where he resigns his appointment, or by reason of death, or where two third majority members of the Board in a written memorandum recommence the removal of the Director to the Attorney-General, either on grounds of incompetence or it is considered not to be in the interest of the public that he continuous to occupy the office of the Director of NAU.
- 2) The Attorney-General shall approve the Director from office if he is satisfy that the request to remove the Director is made in good faith and that it would not be in the interest of the public for the Director to remain in office.
9. (1) The NFIU may from time to time, subject to the approval of the Board, appoint such other staff directly or second officers from any Public Service in the Federal as it may deem necessary to assist the NFIU in the performance of its functions under these Regulations.
- 2) The NFIU shall have power to promote and discipline it staff subject to the ratification of the Board.
10. (1) The management of the NFIU shall consist of the Director Deputy Directors and the heads of departments of the NFUI, whose position shall not be less than that of an Assistance Director.
- 2) The NFIU shall have six departments namely-
- a) General Administration and Supports Services;
 - b) Legal and Co-operation;
 - c) Monitoring Analysis;
 - d) Strategic Analysis;
 - e) Compliance; and
 - f) Information and Communication Technology.
- 3) The NFIU may from time to time create such other departments as it may deemed fit to enhance its operational efficiency.
- 4) The terms and conditions of services (including terms and conditions relating to remuneration, allowances, pensions and other benefits) of the persons employed by the NFIU shall be as determined by the Board after due consultation with the management of the NFIU.
- 5) The NFIU may engage such consultants and advisers as it may require for the proper and efficient discharge of its functions under these regulations.

11. (1) The NFIU shall adopt Public Service staff regulations relating generally to the condition of service appointment, promotion and disciplinary control, including dismissal of employees, etc.
- 2) Appeal by employees against dismissal or other disciplinary measures shall be directed to the Board.
12. The NFIU pension scheme shall as provided for under the Pension Reform Act.
13. (1) The NFIU shall establish and maintain a fund which shall be applied towards the discharge of its function.
- 2) There shall be paid and credited to the account established pursuant to sub-regulation (1) of this regulation -
 - a) such sum as may in each year be appropriated by the National Assembly for the NFIU as a sub-budgetary head under the Economic and Financial Crimes Commission budget;
 - b) all sums approved by the National Assembly and released by the Federal Ministry of Finance for the NFIU; and
 - c) all other sums accruing to the NFIU by way of gifts, testamentary, dispositions, endowment and contributions from philanthropic persons and or organizations otherwise howsoever.
- 3) The NFIU shall have a robust financial budgetary provision to enable it carry out its functions and operations effectively.
- 4) The NFIU may accept gift of land, Money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift, provided that the terms and conditions are not contrary to the function of the NFIU.
- 5) The NFIU may, with the consent or in accordance with any specified authority given by the Board borrow by way of loan or overdraft from any source approved by the Board, specified amount of money as may be required by the NFIU for meeting its obligations and discharging its functions under these Regulations.
- 6) The NFIU shall cause to be kept proper accounts and records in relation to its activities and when directed by the Board, such account and records shall be audited.
14. The NFIU shall, not later than six months after the end of each financial year, submit to the Board a report on the activities of the NFIU and its administration during the immediate preceding year and shall include in the report the audited account of the NFIU and auditor's comment thereon.
15. The Board may give the NFIU such directives of general character with regard to the exercise of the administrative functions of the NFIU.

16. (1) The director of the NAFIU or an officer duly authorized in that behalf may demand, obtain and inspect the books and records of an financial institution to confirm compliance with the provisions of the Money Laundering (Prohibition) Act.
- 2) All personnel of the NFIU shall be entitled to power and benefits applicable to Law Enforcement Agencies, securities and Intelligence Service and all other relevant rules of engagement application to public servants in the Federal Civil Service of Nigeria.
17. These Regulations may be cited as Nigerian Financial Intelligence Unit Regulations, 2015.

MADE at Abuja this 7th May, 2015.

MOHAMMED BELLO ADOKA, SAN, CFR

Honourable Attorney-General of the Federal and Minister Of Justice.

EXPLANATORY NOTE

(This note does not form part of the above Regulation but is intended to explain its purport)

These regulations provides for power and functions of the Nigerian Financial intelligence Unit Regulation and seeks to ensure is operational autonomy.

Index

Alfred Lewis Jones; 1, 3, 5, 11-13, 24
African Banking Corporation; 1, 2, 5, 8

Bank Accounts, Banks' Mandates, Nature and Legal Effects of; 141

Opening of Accounts; 141

The Mandate; 142

Essential Requirements of a Banks Mandate; 142

Types of Accounts; 143

Companies; 143

Federal, State and Local

Government and Statutory

Corporations Accounts; 143

Business Firm, Unincorporated

Company, Partnership; 144

Accounts of Clubs, Trade Unions

and Voluntary Organisations; 144

Solicitors Accounts; 145

Clients' Account; 145

Administrator and Administrative of Estate Account; 145

Joint Accounts; 146

Banking Contracts; 77

Formation of Banking Contract; 77

Parties to the Contract; 77

The Customer; 77

Basis of the Banker-Customer Relationship; 79

Obligations of the Parties under the Contract; 81

Customer's Rights and Obligations; 81

Obligations of the Customer to the Bank; 82

Duty to Exercise Reasonable Care in Drawing Cheques; 82

Duty to Inform the Bank of Missing or Forged Cheque; 82

Duty to Make a Demand on the Account; 83

Duty to Pay Commission for the Services of his Banker; 83

Banker's Rights and Obligations; 83

Duty to Honour Cheques; 83

Duty to Keep Correct Account; 84

Duty to keep Multiple Accounts of the Customer Separate and Distinct; 84

- Duty to Act only on the Instructions and Authorization of the Customer; 85
- Duty to Report Cheque Dishonoured as Forged; 85
- Duty of Secrecy; 86
- Duty to Supply Cheque Books and Pass Books; 86
- Duty to give Reasonable Notice before Closing an Account; 86
- Exceptions to the Rights and Obligations of Banker; 86
 - Insufficiency of Fund; 87
 - Countermand of Payment; 87
 - Notice of Customer's Death and Mental Incapacity; 88
 - Disclosure under Compulsion of Law; 89
 - Disclosure under Public Interest; 90
 - Disclosure in the Interest of the Bank; 90
 - Disclosure with the customers' consent; 90
 - Protection of Bankers; 91
 - S.82 Bill of Exchange Act; 92
 - Collection Banker; 92
 - Instances of Negligence; 92
- Termination of Banker and Customer Relationship and Its Legal Consequences; 93
 - Termination by Mutual Agreement; 93
 - Termination by Notice; 93
 - Termination by Death of Customer; 94
 - Bankruptcy; 96
 - Outbreak of War; 98
 - Garnishee Orders; 99
 - Winding up of Company Customer; 99
 - Winding up of Bank; 99
- Bank Financing; 147**
 - Banker's Commercial Credits; 147
 - Definition; 149
 - Obligation of Issuing and Confirming Banks; 150
 - Deficiencies in Documents: Waiver and Indemnities; 154
 - Rejection of Documents on Extraneous Grounds; 157
 - Warranties by the Beneficiary; 157
- Banking Malpractices; 293**
 - Malpractices by Bank Staff; 293
 - Regular Malpractices; 293
 - Cash Frauds; 294
 - Forged Cheques; 295
 - Loans Fraud; 296
 - Others; 298
 - Malpractices by Non-Bank Staff; 298
 - Malpractices by Banks; 300
 - Circumventing Policy Guidelines; 300

- Interest Rate Policy; 302
- Complaints Desk; 302
- Round Tripping of Funds; 303
- Impacts of Banking Malpractices on the National Economy; 304
- Legal and Institutional Framework for Combating Banking Malpractices; 306
 - Legal framework; 306
 - Bank Employees, Etc. (Declaration of Assets) Act; 306
 - Critical Appraisal of the Act; 312
 - The Dishonoured Cheques Offences Act; 313
 - Institutional Framework; 315
 - Administrative Institutional Regulation; 315
 - Functional Institutional Regulation; 318
- Banks and Garnishments; 173**
 - Meaning of Garnishee Proceedings; 173
 - Nature of Garnishee Proceedings; 173
 - Stages of garnishee proceedings; 174
 - Garnishee Proceedings: Legal Implication for Banking Business; 177
 - Law Governing Garnishee Proceedings in Nigeria; 177
 - Constitution of the Federal Republic of Nigeria 1999 (As Amended); 178
 - Sheriff and Civil Process Act; 178
 - Evidence Act 2011 - Section 167(d); 178
 - Practice Direction; 178
 - Principles Governing Garnishee Proceedings; 178
 - Orders Nisi and Order Absolute; 178
 - Garnishee Order; 179
 - Rules as to Attachment; 182
 - Bank Garnishee Order; 185
 - Practical Examples on Application of Garnishee Order Principles; 186
 - Legal Implication of Garnishee Proceedings on Banking Business and Other Third Parties; 189
 - Conditions for a Valid Garnishee Proceeding; 190
 - Parties to a Garnishee Proceeding; 190
- Captain G.C. Denton; 4
- Chief Akintunde Adeshingbin; 19
- Chief Theophilus Adebayo Doherty; 19, 20
- Colonial Office; 1-3, 5, 8-14
- Crown Agents; 1-5, 8-10
- Development of Banking Business**
 - Nature and Scope of Banking Business; 49

- Who is a Banker?; 52
 - Statutory Definition of “Bank”; 56
 - Judicial Definition of “Bank”; 57
 - Who is a Customer?; 57
- Nature of Banker and Customer Relationship; 60
 - Is Banking a Trade or a Profession?; 62
- David Sassoon; 5
- Dr. Akinola Maja; 19, 20
- Dr. Nnamdi Azikiwe; 22
- Earl of Elgin; 9, 11-13, 24
- Electronic Banking-101**
- E-Banking; 103
- Evolution of E-Banking; 104
- Nature and Scope of Electronic Banking; 105
 - Smart Cards; 106
 - Automated Teller Machines (ATMs); 107
 - Network-Based Banking; 107
 - Electronic Fund Transfer (EFT); 107
 - Telephone Banking (Telebanking); 107
 - Mobile Banking (M-banking); 107
 - Personal Computer Banking (PC Banking); 107
- Legal Structure of E-Banking in Nigeria; 108
 - Electronic Banking and Associated Inhibitions; 109
- Banks and Other Financial Institutions Act; 109
- Evidence Act; 110
- Trans-border and Jurisdictional Issues; 111
- Telecommunication Infrastructures; 112
- Electronic Fraud; 112
- Electronic Funds Transfer Fraud; 112
- Internet Banking Fraud; 112
- Telemarketing Fraud; 113
- Other types of Fraud; 113
- Future of Electronic Banking; 113
- Specific Issues on Internet Banking; 115
- Types of Risks associated with Internet Banking; 118
 - Strategic Risk
 - Operational Risk; 118
 - Security Risk; 118
 - Reputational Risk; 118
 - Legal Risk; 119
 - Money Laundering Risk; 119
 - Cross-Border Risks; 119
- Bank Verification Number and Salient Facts; 119
- Eastern Nigeria Development Corporation (ENDC); 32
- Edward Lawrence; 5
- Elder Dempster & Co; 1-5, 24
- Emmott Committee; 45
- George William Neville; 1, 2, 4, 5, 24

Islamic Banking – Principles and Constitutionality; 319

Islamic Banking Operation in Nigeria; 319

Islamic Banking Operation in Nigeria in Post-1990 and Now; 324

Nigerian Constitutions in Focus; 326

Legalisation of Islamic Banking and Financial Services under the Nigerian Constitutions; 328

1963 Constitution; 328

1979 Constitution; 330

1999 Constitution (As Amended, 2011); 332

Jurisprudential Justification of the Content and ‘Constitutionality’; 334

J. O. Anifalaye; 54

J.B. Loynes; 46

J.L. Fisher; 45, 46

Laws Regulating the Establishment and Operation of Banks in Nigeria; 63

Banking Legislation and their Utilities; 64

Central Bank of Nigeria Act, 2007; 64

Banks and Other Financial Institutions Act (BOFIA) 2004; 66

Asset Management Corporation of Nigeria (AMCON) Act 2010; 69

Nigerian Deposit Insurance

Corporation Act (NDIC) 1997; 71

Dishonoured Cheques (Offences) Act, 1977; 75

Lich H. Moseley; 7, 8

Loans, Overdraft and Interest: Legal Implications; 161

What is a Loan?; 161

What is an Overdraft?; 162

Meaning of Interest; 166

Types of Account Holders; 172

Lord Ripon; 4

Miller Brothers; 10

Mr Mckenzie; 2

Mr. Alfred Olatunde Johnson; 19.

Mr. Herbert; 3, 5

Mr. J. Leslie Couper; 7, 10

Negotiable Instruments, Nature and Legal Effects of; 193

Negotiable Instrument as an Instrument; 194

Negotiable Instrument as a Contract; 194

Negotiable Instruments are Negotiable; 194

Quasi-Negotiable Instruments; 196

Bill of Lading; 196

Share Certificate; 196

Postal and Money Orders; 197

Negotiable Instruments; 198

Treasury Bills; 198

Travellers Cheques; 198

Banker’s Draft; 198

Share Warrant; 199

- Dividend Warrants; 199
- Bearer Debentures; 200
- The Governing Law; 200
 - Bill of exchange; 201
 - Essential Element or Characteristics; 201
 - Defects, Deficiencies and Irregularities; 207
- Types of Bills; 207
 - Bearer Bill; 207
 - Demand Bill; 208
 - Order Bill; 208
 - Inland\Foreign Bill; 208
 - Other Bills; 208
- Parties to a Bill; 210
 - The Drawer; 211
 - The Drawee; 212
 - The Acceptor; 212
 - The Payee; 213
 - The Endorser; 214
 - Holder, Holder for Value; 215
 - Holder in Due Course; 217
 - The Bearer; Transferor by Delivery; 222
 - Accommodation Party; 223
 - Right and Duties of a Holder; 224
 - Issue\Delivery of Bills; 224
 - Signature on Bills; 225
 - Signature by Agent; 226
 - Forged and Unauthorized Signatures; 228
 - Meaning and Significance of Negotiation of Bills; 229
 - Conditional Endorsement; 231
 - Endorsement in Blank; 231
 - Special Endorsement; 232
 - Restrictive Endorsement; 232
 - Negotiation of an Overdue Bill; 233
 - Negotiation to a Prior Party; 233
- Acceptance of Bills; 235
 - Meaning, Validity and Time of Acceptance; 234
 - Classification of Acceptance; 235
 - Presentment for Acceptance; 236
 - Acceptance for Honour; 238
- Payment of Bills; 239
 - Time of Payment; 240
 - Presentment for Payment; 241
 - Payment for Honour; 242
- Dishonour of Bills; 243
 - Dishonour by Non-Acceptance; 244
 - Dishonour by Non-Payment; 245
 - Notice of Dishonour; 246
 - Noting and Protesting of Bills; 248
- Discharge of Bills; 249
 - Meaning of Discharge; 249
 - Discharge by Payment in Due Course; 249
 - Discharge by Negotiation to Acceptor; 251
 - Discharge of Express Waiver or Renunciation; 252
 - Discharge by Cancellation; 253
 - Discharge of Alteration; 254
- Cheques; 255
 - Form of a Cheque; 256
 - Open Cheques; 257

- Crossed Cheques; 257
- Opening a Crossed Cheque; 261
 - Effect of Crossing; 262
- Payment of Cheques; 262
 - Demand Necessary; 263
 - Demand Must Be at Branch Residence of Account; 264
 - Account Must Be in Credit; 266
 - Availability and Sufficiency of Funds; 267
 - Authority to Draw Against the Customer's Account; 268
- Protection of Banker; 269
 - Protection For the Paying Banker; 270
 - Protection of the Collecting Banker; 276
- Promissory Notes; 281
 - Definition and Character; 281
 - Form of Promissory Note; 285
 - Parties and Their Liabilities; 286
 - Payment of Promissory Notes; 289
 - Negotiation and Discharge of Promissory Notes; 290
 - Special National Promissory Notes; 290
 - Key notes on negotiability; 291
 - Requirement of Negotiability; 291
 - Benefits of Negotiability; 291
 - Assignment, Negotiability and Transferability; 292
- Nigerian Banking System: Historical Development and Evolution**
 - Bank of British West Africa; 4-8-13, 45
 - Bank of Nigeria; 6, 11, 13
 - Anglo-African Bank Limited; 6, 7, 9
 - Bank of West Africa; 8
 - Standard Bank of Nigeria; 8
 - First Bank of Nigeria; 8
 - History of the Merger; 8
 - Royal Commission on Shipping Rings; 10
 - Efficacy of the Merger; 11
 - Colonial Bank; 14
 - Barclays Bank (Dominion, Colonial, and Overseas); 14
 - British and French Bank; 14
 - United Bank for Africa; 14
 - Allied Bank; 14
 - American Chase Manhattan Bank; 14
 - Arab Bank; 14, 15
 - Bank of America; 14
 - Bank of India; 14
 - Nigeria-Arab Bank; 15
 - Savannah Bank; 14
 - Emergence of Indigenous Banks; 15
 - National Bank of Nigeria; 15, 19, 21
 - Industrial and Commercial Bank; 16-18, 20, 21
 - Nigerian Mercantile Bank; 18-21
 - Nigerian Industrial Cooperation Society; 18
 - Mutual Aids Society; 19, 20
 - African Continental Bank; 22

- Other Indigenous Banks; 22
 - Agbonmagbe Bank; 22
 - Wema Bank; 22
- Nigerian Industrial Cooperation Society; 18
- Northern Region Development Corporation; 24, 32
- Securities for Bank Lending: Perfection and Enforcement; 125
- Bank Lending and Securities; 125
 - Landed Property and Mortgage; 126
 - Nature of Mortgage Transaction; 126
 - Legal Mortgage; 127
 - Equitable Mortgage; 127
 - Mortgage of Life Policy; 127
 - Mortgage of Stocks and Shares; 128
 - Legal and equitable mortgage of stocks and shares; 128
 - Trust Receipt; 129
 - Bills of Sale; 129
 - Company's Assets and Debentures; 129
 - Hypothecation of Goods; 130
- Specific Securities for Bank Lending in Nigeria; 131
 - Features/Virtues/Qualities of Good Banking Securities; 131
 - Land and classifications of; 131
 - Conveyances, Leases, Assignment of Land Executed, Stamped and Registered Before 29th March, 1978; 132
 - Leases, Assignment of Property Executed, Stamped and Registered after 29th March, 1978; 132
 - Undeveloped Land as Security; 132
 - Land in Urban and Rural Area; 132
 - Statutory and Customary Right of Occupancy Distinguished; 133
 - Insurance Policies; 133
 - Permissible Features of Acceptable Insurance Policies; 133
 - Stocks and shares; 135
 - Guarantees; 135
 - Categories of Guarantor; 136
- Perfection of Bank Securities; 136
 - Land; 136
 - Guarantee execution/perfection procedure; 137
 - Stamping; 137
 - Enforcement of Bank Securities; 137
- R. L. Antrobus; 12
- Royal Mint; 2-4, 8, 9, 11
- Sir Frederick Lugard; 13
- Sir Walter Egerton; 10
- Structure of Nigerian Banking System; 27**

- Commercial banks; 27
 - Definition; 27
 - Origin; 27
 - Functions; 28
 - Features; 28
- Merchant Banks; 29
 - Origin and Definition; 29
 - Functions; 30
 - Form and Structure; 30
- Development Banks; 31
 - Origin and Concept; 31
 - International Bank for Reconstruction and Development (World Bank); 31, 38, 44
 - Bretton Wood Agreement of 1944; 31
 - National Industrial Development Bank (NIDB); 33
 - National Agricultural and Cooperative Bank (NACB); 33
 - Nigerian Bank for Commerce and Industry (NBCI); 33, 44
 - Federal Mortgage Bank of Nigeria (FMBN); 33
 - Nigerian Export import Bank (NEXIM); 33
- Nigeria Industrial Development Bank (NIDB); 33-35
 - Investment Company of Nigeria (ICON); 33
- Nigerian Bank for Commerce and Industry (NBCI); 35-38
- National Agricultural and Co-operative Bank (NACB); 38
- African Development Bank (ADB); 38, 44
- European Investment Bank (EIB); 38
- International Fund for Agricultural Development (IFAD); 38
- Federal Mortgage Bank of Nigeria (FMBN); 38-40
- Nigerian Export-Import Bank (NEXIM); 40
- Specialized Banking Institutions; 42
 - People's Bank of Nigeria (PBN); 42
 - Community Banks (CMBs); 42, 43
 - Urban Development Bank of Nigeria (UDBN); 42, 44
 - International Development Association (IDA); 44
 - European Development Bank arid Fund (EDBF); 44
 - African Development Bank (ADB); 44
 - Bilateral loans and grants on government to government basis; 44
 - Shelter Afrique and other donors; 44
 - Other multilateral loans and donor agencies; 44
 - Nigerian Agricultural Corporation and Rural Development Bank (NACRDB); 44
- Central Bank of Nigeria; 44-47

Royal Mint; 2, 11

Subair, H.A.; 20

The Mutual Aids Society; 19-21

Tinubu Properties”; 22

West African Currency Board
(WACB); 45

West African Trade Association of
Liverpool; 9

Western Region Finance
Corporation; 32

The Law of Banking in Nigeria - Principles, Statutes and Guidelines captures the general principles of banking law, statutes and guidelines relating to banking transactions. The book is presented in a very simple, precise, and clear language and contains three parts of thirty-one chapters in all covering the general principles of banking. It should create considerable awareness among the general public, law students, law teachers, bank customers as well as banks and bankers. Most certainly, it is a book that will assist the students and researchers in this area of law in wading through the general principles of banking law as well as the numerous Legislation and Guidelines on banking business.

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